

Case No. ____

WHITE EARTH BAND OF OJIBWE
IN TRIBAL COURT OF APPEALS

MINNESOTA DEPARTMENT OF NATURAL RESOURCES, et al.,
Defendants-Appellants,
vs.
MANOOMIN, et al.,
Plaintiffs-Respondents.

**RESPONDENTS' MOTION FOR INJUNCTION
AND EXHIBITS A-L**

TO: Oliver J. Larson and Colin P. O'Donovan, Assistant Attorney Generals,
445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, and
White Earth Tribal Appellate Court Administration.

Pursuant to the White Earth Appellate Court Rules of Procedure 17 (D)(2)
and (3), Respondents herein move this Appellate Review Panel to provide for an
injunction as originally requested August 23, 2021, at Tribal Court below, to
provide an *order appropriate to preserve the existing state of affairs* because the
DNR will not stop the unlawful uses of surface and ground and unlawful discharge
of waters by Enbridge's Line 3 project.¹ The actual issue at stake in this case is the
DNR intentionally circumventing notice to tribal leaders and unilaterally issuing

¹ See **Exhibit A**, *Enbridge violated water protection rules again while MNDNR stands by* – by
Jeffrey S. Broberg, LPG, MA, Minnesota Licensed Professional Geologist dated September 22,
2021. Mr. Broberg will be available as an Expert Witness in this instant Manoomin v DNR case.

Line 3 an after-the-fact 5 billion gallons dewatering permit up 10 fold from the original Line 3 water permit of about 500 Million gallons of water, so as to avoid public notice, scrutiny and evidentiary hearing . . . during an extreme drought!

The DNR obviously knew making the public and tribes aware of the 5 (five) billion water appropriation request by Enbridge after December 2020, was going to be challenged.² Consequently, the DNR officials intentionally took steps to avoid a contested case proceeding for the excessive dewatering demand (as compared to the original 0.5B/gallons Line 3 DNR alleged water need). The DNR waited until May 14, 2021, then to only email contact only, some tribal natural resource people, but not Chippewa elected leaders directly, much less with an actual Notice or Opportunity to be heard, or right to participate in an evidentiary hearing and DNR decision.³ An evidentiary hearing would have alerted the public and tribes to the aquifer breach months ago. An evidentiary hearing would have alerted the public and tribes to the DNR not verifying compliance by Enbridge Line 3 and completely missing the aquifer breach months ago and still releasing 100,000 gallons a day. The June 4, 2021 DNR permit for 5 billion gallons of water and the

² Enbridge was issued permit no. 2018-3420 on December 8, 2020 for a total of 510.5 million gallons water permit.

³ See **Exhibit B**, ENBRIDGE LINE 3 REPLACEMENT PROJECT Water Appropriation Permit Amendment No. 2018 – 3420 (Construction Dewatering), FINDINGS OF FACT, CONCLUSIONS AND ORDER, Water Appropriation Permit No. 2018-3420 Enbridge Line 3 Replacement Project June 4th, 2021. See also report at DNR website <https://files.dnr.state.mn.us/features/line3/decisions/04june2021-update-trench-watering-decisions.pdf>

September 16, 2021, DNR \$3.3 million fine for Enbridge Line 3, report and remedial plan are both *smoking gun memorandums* outlining who knew what and when as explained in more detail in Exhibit A, by Broberg.

Background

Last Thursday (9/16), the DNR issued a News Release *DNR Orders Enbridge Energy to Pay \$3.32 Million for Failure to Follow Environmental Laws* while constructing Line 3 saying

[‘]DNR is committed to its role as a regulator on this project and is taking seriously our responsibility to protect and manage natural resources within existing state law[‘] said DNR Commissioner Sarah Strommen. [‘]Enbridge’s actions are clear violations of state law and also of public trust. This never should have happened, and we are holding the company fully accountable.’⁴

As part of the Information Release the DNR has also referred this matter to the Clearwater County Attorney for criminal prosecution. The DNR has determined that Enbridge Energy violated Minnesota Statute 103G.141, subdivision 1, which makes it a crime to appropriate “waters of the state without previously obtaining a permit from the commissioner.”⁵

⁴ See **Exhibit C**, <https://www.dnr.state.mn.us/line3/index.html> Minnesota Department of Natural Resources Orders Enbridge Energy to Pay \$3.32 Million for Failure to Follow Environmental Laws, 9-16-21.

⁵ See **Exhibit D**, <https://files.dnr.state.mn.us/features/line3/restoration-order-enbridge-energy-9-16-21.pdf> *DNR Restoration Order Enbridge Energy 09/16/21* and **Exhibit E** <https://files.dnr.state.mn.us/features/line3/administrative-penalty-order-enbridge-energy-9-16-21.pdf> online DNR attachments to Exhibit A.

Here, Enbridge's civil violations and alleged criminal conduct does not result in a stop work order for many months. See Exhibit A, Ex. 1: *Chronology of Violation and Regulatory Failure Derived from MNDNR Violation History and Barr Flow Remediation Plan* starting page 10. Instead,

to ensure that violations haven't occurred elsewhere, the DNR is requiring Enbridge to fund a re-inspection of any and all areas along the entire route where construction depths deviated from plans (as they did at the Clearbrook Terminal site).

Enbridge, their Line 3 contractors and Independent Environmental Monitors (IEM) all collectively, circumvented and intentionally violated important environmental laws meant to protect Minnesota starting in January 2021. DNR says no one from Enbridge's construction workers or IEMs made any reports for months, to the DNR.

DNR failed to do its job, and DNR's failures resulted in zero Enbridge compliance with any construction plans or contact protocols right at the beginning of construction. When Enbridge encountered two (2) known-to-be-existing oil pipelines in unexpected circumstances, and unique artesian aquifer, Enbridge guessed poorly, decided in secret, to keep the breach secret. To this day the artesian aquifer is still, continuing to release over 100,000 gallons of aquifer water *per day* into Enbridge Line 3 pipeline construction trench and likely into adjacent wetlands like before.

Consequently, exigent circumstances exist and the need to stop any and all water use and discharges by Enbridge for Line 3 must happen immediately. Respondents herein (Plaintiffs in Tribal Court below) respectfully request this Appellate Court to issue a preliminary injunction to establish *status quo* and prevent on-going wanton waste of precious natural resources, and the *nibi* (the waters) we all who actually live here . . . rely upon. *Manoomin et al* need cessation (an injunction) to stop unconscionable water use and unlawful discharge *with really independent review* before any other DNR permitted activities are allowed for Line 3. This injunction would then stop frac-outs if Line 3 drilling and construction was stopped. But frac-outs have not stopped and a new frac-out has been reported⁶. The DNR has new protection plans established without the public and tribes participation . . . again . . . that enables and allows Enbridge to proceed after violating permits and causing irreparable harms to the aquifer.⁷

⁶ See Exhibit F, *Line 3 Presentation - Facts and Footage of Frac-Outs & Violations FINAL* by Ron Turney of IEN. See also <https://www.ienearth.org/new-frac-out-reported-from-the-mississippi-river-headwaters-from-line-3-construction/> *New Frac-Out Reported from the Mississippi River Headwaters From Line 3 Construction*, by Ron Turney, Indigenous Environmental Network, September 24, 2021. Video from Sept. 17, 2021. Mr. Turney will be available as a Witness.

⁷ See ABC Nightly News *Environmental activists call on White House to halt pipeline construction* Sept. 23, 2021, https://www.youtube.com/watch?v=USQFA_NcYsg (including Sam Strong from Red Lake Band Tribal Council interviewed in 6 minute story which includes the \$3.3M DNR orders.)

Water Protectors

By coincidence, Water Protectors named in the full caption of this case had established a Camp at a Mississippi River Line 3 crossing north of Palisade. In the early winter 2020, Winona LaDuke⁸ and Tania Aubid had established an Anishinabe *spiritual lodge* near the shore of the Mississippi River, on public forest lands along the route where the pipeline horizontal drilling under the Mississippi River was expected to occur.⁹

In December 2020, Enbridge and Aitkin pipeline funded state law enforcement and the DNR Conservation Officers discovered that *spiritual lodge* could not be destroyed or removed without violating the American Indian Religious Freedoms Act. The spiritual lodge was protected and Anishinabe people had a right to travel, use and occupy that lodge, including their invited guests ... other water protectors. This *spiritual lodge* told Enbridge that DNR and legislatively criminalizing civil rights cannot stop tribal water protectors from exercising their religious freedoms on public lands where Line 3 was being

⁸ See *Newsweek* <https://www.newsweek.com/tribal-nations-take-oil-giant-battle-against-line-3-pipeline-1631772>

⁹ See **Exhibit G**, *Declaration of Winona LaDuke in Support of Plaintiff's Motion for an Injunction Pending Appeal* (Exhibit J) in Red Lake, White Earth et al v U.S. Army Corps of Eng'rs, Case No. 20-cv-03817, in DC federal circuit. Id. See also **Exhibit H**, *Declaration of Jaime Arsenault in Support of Plaintiff's Motion for an Injunction Pending Appeal* (Exhibit G), Arsenault is the Tribal Historic Preservation Officer ("THPO") for the White Earth Band of Ojibwe ("White Earth Band" or "Band").

constructed. Unfortunately, Enbridge's private security¹⁰ and local law enforcement continue to harass and coordinate surveillance for information stops, searches, arrests, strip searches and engaged in other civil rights violations against water protectors. The only state laws being enforced since the January Line 3 breach of the artesian aquifer and irreparable damage, were against water protectors, by Enbridge paid security, DNR and other state law enforcement. DNR is either unwilling or incapable of stopping Enbridge environmental destruction¹¹ . . . at any price.

Standards for Preliminary Injunction

The test used by the courts for evaluating a motion for a Temporary Restraining Order (TRO) and Preliminary Injunction (PI) is generally the same. Although the test for obtaining a TRO or PI may vary slightly across jurisdictions, generally a plaintiff seeking preliminary injunctive relief must satisfy a four-factor test: (1) that he or she is likely to succeed on the merits of his claims; (2) that he or she is likely to suffer irreparable harm without preliminary relief; (3) the balance of

¹⁰ See *Amazon's Former Security Chief Is Now Guarding the Line 3 Oil Pipeline, Opponents of oil transport company Enbridge say that the company is using military-style counter-insurgency tactics against protesters* by Tom McKay, Sept. 22, 2021, <https://gizmodo.com/amazons-former-security-chief-is-now-guarding-the-line-1847724615>

¹¹ See *Newsweek To Protect Their 'Sacred Water,' Tribal Nations Take On an Oil Giant* by Julia Rock, THE DAILY POSTER on 9/23/21 <https://www.newsweek.com/tribal-nations-take-oil-giant-battle-against-line-3-pipeline-1631772>

equities between the parties support an injunction; and (4) the injunction is in the public interest.

These factors were recently discussed in an identical request for injunction filed August 23, 2021, with the Tribal Court below. The recent disclosure 9-16-21 by DNR and \$3.3M fines and restoration plans, combine with the 5 billion gallons dewatering permit 6-4-21, are shown together with the Chronology in Exhibit A by Broberg. This Chronology reveals choices Enbridge and so-called Independent Environmental Monitors chose oil capitalism over tribal interests and the public interest. Manoomin and the people are suffering, on-going irreparable harms by the conspiracy to cover-up, ignore and sellout water and all the creatures which depend on water. Water is Life.

DNR has filed in Federal District Court of Minnesota against the White Earth Tribal Court exercising jurisdiction over this instant case, seeking injunction to prevent the exercise of tribal sovereignty and protection of nature, our relative. The DNR no longer has an urgent desire to resolve tribal jurisdiction or these water rights issues, rights of manoomin and rights of treaty beneficiaries to be considered in tribal court.

Instead the DNR compounds delay by filing again for appeal of the Honorable Judge Wright's orders¹² and injunction against White Earth Band of Ojibwe and Chief Judge DeGroat in the 8th Circuit Court of Appeals. Last week, DNR was denied preliminary injunction request by the Eighth (8th) Circuit, pending DNR's appeal at the Eighth Circuit.¹³

The balance of the equities are more weighted in favor of the injunction every day the DNR stalls against the on-going aquifer breach, frac-outs and climate change concerns for the *manoomin* (wild rice) and *nibi* (water). Only an injunction against DNR's any and all surface water and aquifers permits and unlawful discharges and dewatering of construction permits for trenches and related areas.

The DNR waited until September 13, 2021 to file its notice of appeal for White Earth Tribal Court of Appeals and 8th Circuit Court of Appeals. The DNR's legal tactics appears more focused on federal court appeal expediency and delay in

¹² See **Exhibit I**, *Order Denying Plaintiffs' Motion for Preliminary Injunction and Dismissing Complaint without Prejudice* by Honorable Judge Wright Case No. (0:21-cv-01869-WMW) dated 9-3-21. See also **Exhibit J** *Order Denying Plaintiffs' Letter Request for Permission to File a Motion to Reconsider* by Honorable Judge Wright dated 9-10-21.

¹³ See **Exhibit K**, *Order* by the Eighth Circuit dated 9-21-21, Case No: 21-3050 in Minnesota Department of Natural Resources, et al. v. The White Earth Band of Ojibwe and Hon. David A. DeGroat, in his official capacity as judge of the White Earth Band of Ojibwe Tribal Court, Appeal from U.S. District Court for the District of Minnesota (0:21-cv-01869-WMW). (DNR's request for Preliminary Injunction denied).

Exhibits for
Motion for Preliminary Injunction
9-24-21

Exhibit A

Jeffrey S. Broberg, LPG, MA
Minnesota Licensed Professional Geologist
11596 Person Drive, St. Charles, MN 55972
Elbabroberg1@gmail.com c 507-273-4961

September 22, 2021

Frank Bibeau

Honor the Earth

PO Box 63, 607 Main Ave.

Calloway, MN, 56521

FOR IMMEDIATE RELEASE

RE: Enbridge violated water protection rules again while MNDNR stands by.

Dear Mr. Bibeau:

Environmental and water resource protections fail without sincere prevention efforts, without clear plans that follow the rules, without the early detection of problems, or transparent acts.

Can you imagine a massive pipeline project designed to move millions of barrels of tar sands crude where the pipeline fails to follow approved construction plans? Or can you imagine a project subject to detailed State and Federal Environmental Permits that violates the terms of the permits then fails to disclose its intentional violations until all the work is done? Or can you imagine a State regulator who trusts the Contractor enough not to review inspection records for five months and misses severe and possibly irreversible environmental damage? These scenarios are now the latest chapter of the story of Enbridge Line 3 and MNDNR oversight.

Last January, Enbridge, its contractors, consultants, and “independent” inspectors minimized severe problems and took advantage of Minnesota’s lack of timely regulatory oversight. The Minnesota Department of Natural Resources did not learn of the severe aquifer issues for many months and did not take action to stop the problems for eight months.

Following the recent disclosures of unreported “frac outs” releasing drilling mud to the Clearwater and Mississippi Headwaters and the June surprise of Line 3’s 50-fold increase in water use in an extreme drought, we find Minnesota’s groundwater is being impaired by Line 3 while we watch. Once again, the environment has suffered, and we and Minnesota’s water-dependent ecosystems must settle for our regulators granting forgiveness to Enbridge because they failed to protect our water resources.

Enbridge contractors ruptured a sensitive and timeless artesian aquifer on land in mid-winter. Clearbrook’s artesian aquifers form springs in the Lost River headwaters of Assiniboine ceded territory (1889 Chippewa Treaty). The springs never freeze, and pure, cold, clear water flows the medicine of life to the surface year-round.

Last January, the ruptured aquifer welled up with water along in the deep trench of the petroleum pipeline, and the aquifer started to lose its natural flow in the springs, and the is losing the flow into the rare calcareous fens. The uncontrolled groundwater flow and the pipeline springs have continued unabated for eight months.

The loss of pure groundwater has now totaled 24.2 million gallons, 106,000 gallons a day, enough to sustain multiple springs and many acres of groundwater-dependent wetlands and extreme drought. On September 16, the Minnesota Department of Natural Resources (MNDNR) finally issued a Restoration Order to fix the rupture within 30 days and restore the drought-stricken fen, hoping to restore all the nearby springs to keep the clean water out of the pipeline trench.

Upwelling hydraulic forces and geologic factors make restoring a ruptured aquifer complex uncertain, and Enbridge or the MNDNR seem never to address the cultural value attached to the water from the ancient natural artesian springs.

After a multi-year history of regulatory permit failures from the MNDNR and MPCA, the stage was set for another disaster when Enbridge willfully ignored design documents, regulatory warnings and ignored permit conditions at the Clearbrook pipeline crossings. The next six months left a legacy of inspectors failing to report alarming water and quicksand hazards, leaving regulators unaware of another Line 3 water disaster. The litany of regulatory failures and unabated environmental problems draws us to conclude that the Line 3 pipeline should have never been permitted. Line 3 construction has already proven to be a clear and present danger to the future of our water resources.

Enbridge, the Independent Environmental Monitors, and the MNDNR have proven not to be trustworthy stewards of our water. Considering the litany of failures and lack of transparency, the only reasonable outcome is to stop all activity except inspections and corrective actions. Because of the history of regulatory default, all Line 3 construction and pipeline activation activity should be seized under the control of the Court.

The Nature and Hazards of Confined Artesian Aquifers at Clearbrook Terminal

In the headwaters of Silver Creek/Lost River/Clearwater River Watersheds, deeply buried bedrock are draped by alternating layers of impervious glacial till and highly permeable beds of glacial sands and gravel that give rise to artesian springs. The Line 3 route at Clearbrook is on the northern margins of Minnesota's Groundwater Province 4, with ground moraines of glacial till and where buried sands and gravels from artesian aquifers and sustain fens, springs, wetland seeps, lakes, and streams.

A review of the water well records from the Minnesota Well Index and geotechnical borings along Line 3 shows the Line 3 route has a 35-to-50-foot layer of impervious, clay-rich glacial till at the surface over a thick layer of sand and gravel. The sands and gravels are highly productive artesian aquifers. To control the upwelling pressure, thirty- and fifty-foot-deep wells in the immediate area are drilled with heavy drilling mud. Deep excavations or wells drilled without heavy mud are often lost during construction when the water pressure pushes to the surface and quickly turns the wellbore into quicksand as the water moves upward to the surface. Entire Townships around Clearbrook demonstrates upwelling hydraulic pressure where the surrounding lands are known for artesian wells, springs, groundwater-supported wetlands, and calcareous fens.

Deep excavations that rupture the seal formed by the 30-foot thick glacial till rapidly become a construction hazard. Artisan water appears to boil to the surface and liquify the surrounding soils into mud and quicksand. The breach of powerful artesian forces threatens to swallow heavy equipment and become an immediate and uncontrollable hazard. A new unnatural "boiling sand" spring formed in the pipeline trench.

On January 21, the Enbridge contractors excavated within ten feet of the top of the Clearbrook Artesian Aquifer. The over pressured aquifer ruptured near the existing pipelines, and uncontrollable water rushed to the surface. The Contractor

lost all ability to contain the water, and project managers faced a significant problem.

To install the pipeline, Enbridge contractors needed an 18-foot-deep bore pit. The Contractor installed a 28-foot-deep steel sheet pile wall to control the artesian flow, a 110-foot wall on either side of the pipeline route, and a steel plate on the east end where the boring would tunnel under the existing hot pipes. With five dewatering wells, they could lower the water level in the walled-off trench and install the Line 3 connection to the Clearbrook terminal. But once they stopped dewatering, the soils between the sheet piles again turned to quicksand, and a large boiling sand spring appeared. Once they pulled the sheet pile, a new aquifer rupture occurred 60 feet west of the original rupture—the difficulty of stopping the uncontrolled flow magnified.

Water appropriation and water quality discharge standards were violated, and the prospect of quickly restoring the sealed cap over the artesian aquifer diminished by the day. In my 35 years of Minnesota groundwater management experience, the uncontrolled artesian flow has repeatedly proven to be among the most challenging construction hazards to solve.

Irregular Design, Permitting, Construction, Inspection, and Reporting

During the Line 3 water appropriations permitting, the MNDNR raised concerns about groundwater-supported wetlands and artesian aquifers, especially the risk on rare calcareous fens located just east of the Clearbrook terminal. In November 2020, the MNDNR reviewed the local construction plans and issued a “No Effect Concurrence” to Enbridge for the Clearbrook area fens. Enbridge gave assurances that the groundwater flows sustaining the fens would be protected because the approved design called for an 8- to 10-foot-deep bore pit, 20 to 28 feet above the top of the pressured aquifer.

In less than 50 days, Enbridge Project Managers and contractors faced the prospect that the designed bore pit at the Clearbrook Terminal was not deep enough to allow boring beneath two existing pipelines. Line 3 had to make a “hot crossing” beneath two high-pressure pipelines, and they needed a 16 to 18-foot bore pit in a 50-foot-long trench box. Reality-based field decisions overrode the approved design plans and permits. The 18-foot-deep trench immediately ruptured the artesian aquifer as it approached the east end of the trench near the hot crossings.

Rather than reporting the aquifer breach, the massive water appropriations, and the muddy water discharge to the surrounding stream and wetlands, Independent Environmental Monitors (IEM's) overlooked the design changes and permit violations. The Monitors did not report any changed conditions other than "difficult dewatering."

Enbridge's failure to report the aquifer breach violated their water appropriation permits, water discharge permits, and wetland permits.

The approved Environmental Monitor Control Plan (EMCP) required the IEM's to notify the State Agencies of "Modified Construction Activities" and Modification to Permit Requirements." The failure to report and revise permits violated the letter and intent of the EMPC and violated multiple environmental permits. (Section 6.0, pg. 15 of EMPC. Section 6.1, pg. 15-16 of EMPC)

Attached as Exhibit 1, a timeline for the ruptured aquifer, the 28 reported frac-outs, and the amended water appropriations is a chronological compilation of unauthorized Enbridge activities and MNDNR inactivity. The chronology demonstrates obfuscation by both the company and their "Independent" monitors keeping information from State Agencies while allowing continuing uncontrolled water appropriation and shows just how slow the MNDNR was to respond.

The history of the aquifer rupture, frac-outs, and excessive water appropriations in the drought reveals an intentional and blatant disregard for the permits and protecting Minnesota waters.

Permitting and Regulatory Failures:

Enbridge and MNDNR Disconnection Puts and Aquifers at Risk

The core principles of environmental and water resource protection are prevention guided by accurate plans, design and permit compliance, and early detection and reporting of problems. All three principals failed at the Clearbrook terminal, Line 3 aquifer rupture, frac-outs, and water appropriation amendments. The MNDNR was faced with a massive undertaking and failed.

MNDNR permit conditions for water use, MPCA permits for water discharge, and Corps of Engineer permits for wetlands were designed based on accurate design and operation standards submitted in advance by the applicant. These factors are meaningless if permit conditions are not understood, ignored, or intentionally violated by the Permit holder. Permits and regulatory tools and are

just as useless if regulators fail to make the permits and rules understandable to both permit holders and inspectors. If contractors look away from permit conditions, the regulators are in the dark. If the regulations are either unaware or waived permits, there can be no enforcement and no deterrence against future violations. The actions of both Enbridge, their “Independent Monitors,” and the MNDNR produce mistrust that can only be resolved with an effective and independent third-party review. The independent monitors need proper knowledge and rules to assess the environmental damage and restoration needs. The Clearbrook artesian aquifer breach demonstrates that we should distrust all the actors because every level of permit and regulatory failure has occurred.

The hydrologic conditions at Clearbrook Terminal were well understood after decades of local groundwater investigations and Line 3 geotechnical borings. MNDNR, MPCA, and Enbridge say they know the risks to groundwater-dependent wetlands and calcareous fens, but that knowledge has never translated to adequate protections.

Line 3 developers requested routine and moderate dewatering permits that never addressed the likely uncontrolled flow with deep excavations or the need for larger volumes of water with frequent frac-outs. The result is hundreds of thousand gallons a day disgorging from Clearbrook’s shallow artesian aquifer or pumped into the ground when doing the pipeline borings.

While MNDNR understood the aquifer and fen risks, they granted a “no impact concurrence” for the fen because only shallow excavations were envisioned. It is unclear whether the MNDNR reviewed the artesian character of the Clearbrook artesian aquifer with Enbridge and the Independent Environmental Monitors failing to advise contractors on preventing an uncontrolled aquifer disaster.

At the same time, Enbridge Project Managers and contractors should have known the necessity of deeper excavation to cross existing pipelines. They should have known and anticipated the artesian pressure from the Clearbrook aquifer. The deep bore pit plans were not in the Enbridge design review documents. While permit writers and hydrologists relied on the design documents, prevention failed again when contractors changed plans without considering the known artesian risks.

Prevention requires high situational awareness and accurate reporting; contractors, inspectors, and regulators need to be constantly apprised of onsite

conditions, especially in high-risk settings, and they must report related problems. The approved Environmental Monitoring Plan requires Inspectors to routinely upload Inspection records to a password-protected portal that regulators can review. Failures occur whenever inspection reports are not timely, when they are not accurate, when the inspection reports obfuscate the facts, and when regulators fail to do a timely review. The same problems occurred when the aquifer ruptured, frac-outs, and 50-fold expansion in water appropriations during a drought. The institutional measures to prevent and minimize environmental impact failed with the aquifer rupture.

Digging deep pits in artesian settings and near groundwater-dependent ecosystems was the first compliance failure that went unreported. Poor project design calling for bore pits to cross actively flowing pipelines set up the disappointment that could have been prevented. Appropriate well-designed modifications that protect the environment. Many consultants, contractors, and the MNDNR have experience controlling subsurface flow. Onsite drillers controlled the flow with heavy drilling mud designed to contain the pressure, and excavators either dewater the risky area in advance, surcharge the flow or create a grouted seal over the top of artesian aquifers. Appropriate modifications can only be approved if the Permitted party discloses the changes required in the permit; here, permit compliance failed.

When the water came welling up and created quicksand in the pipeline trench, the Contractor abandoned the deep bore pit effort in fear of losing their equipment. The failure to report the problem was a severe violation where the blame is shared by Enbridge, the Contractor, the Independent Environmental Monitors, and the MNDNR regulators. The Contractor trying to avoid stop-work orders or design delays first made a hasty decision and then felt compelled to hide the problem from regulators for months. The environmental monitors failed their regulatory responsibility to identify and report the aquifer breach forcing a nine-month delay in restoring the aquifer.

As a geologist with pipeline construction experience, I can envision the Contractor hoping the artesian pressure would rapidly decline as it often does in minor confined aquifers with limited volume. But hope is not a regulatory compliance strategy, proven when dealing with a large regional aquifer with over 25 feet of head pressure.

Other serious violations occurred at Coldbrook, which are regulated by the MPCA and the Corp of Engineers. Discharge of silt and mud into streams and wetlands violates Construction Site Stormwater Permits and wetland protections. Failure to timely notify the pollution is a violation itself; continuing the work compounds the violations.

In addition serious violations have assaulted our aquifers with the frac-outs and 5 billion gallons of water appropriations during a drought.

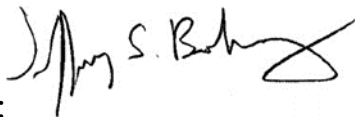
Conclusion: Failed Promises Destroy Trust

Eight months of large volume flows from a ruptured regional aquifer are now exceeding 100,000 gallons per day, depleting the aquifer, reducing the hydraulic head threatening groundwater-dependent ecosystems. Frac-outs have a yet undefined risk to aquifers and surface water resources, and massive water withdrawals during extreme drought may impact both aquifers and surface waters. The attached chronology was compiled from Permit history, the MNDNR timeline in the Clearbrook Restoration Order, the Clearbrook Remedial Action Plan, the frac-outs, and amended Water Appropriation Permits. As an experienced environmental risk manager, I see the public documents as sanitized versions of a severe violation and a complete failure to protect our water resources.

Enbridge, their contractors and consultants, the Independent Environmental Monitors, and the MNDNR regulators failed to meet their obligations and created an ongoing risk. Even with the failures, there are only minor consequences related to the actual costs of fixing the problem; there are no penalties for over five months of evasion and no deterrence that makes it risky to violate the law.

The only fix to the abuses is for a Court or a Regulator to put a hard stop to all activities except independent inspection, remote sensing for upwelling water from aquifer ruptures and frac-outs, and disclosing all irregular design changes. Our water resources are at risk; no other actions should be allowed. Once the total damages have been restored, heavy fines and penalties must be levied for every unreported infraction.

Sincerely:



Jeffrey S. Broberg, LPG, MA, Minnesota Licensed Professional Geologist #13009

CC: Steve Morse and Sara Wolff, Minnesota Environmental Partnership

References:

MNDNR Restoration and Replacement Order

Barr Engineering Remedial Action Plan

Enbridge Environmental Monitoring Plan

Minnesota Well Index well logs

Enbridge Dewatering Permit 2018-****

Exhibit 1:
Chronology of Violation and Regulatory Failure
Derived from MNDNR Violation History and Barr Flow
Remediation Plan

Dec. 2019: Approval of Environmental Monitor Control Plan. Enbridge Energy Limited partnership – Line 3 Replacement Project.

December 28, 2020: MNDNR issued Water Appropriations Permit 2018-3420 to Enbridge for 510,000,000 Gallons.

November 12, 2020, MNDNR issued Enbridge “No Effect Concurrence” for excavation 8-10 feet deep that would have an impact on the hydrology of fen

January 21, 2021: Enbridge abandons plans for shallow excavation due to existing pipelines and dug to 18 feet and ruptured artesian aquifer creating uncontrolled flow.

January 26, 2021: IEM noted “unmanageable dewatering conditions” and the need for SWPPP to direct new flow across the roadway

February 2, 2021: Borehole excavation or entry pit encountered “excessive GW infiltration.”

February 8, 2021: 110-foot sheet pile wall installed within wetland dewatered with five wells, installed 50-foot long trench box in bore pit for “hot crossing” of existing pipelines.

Trench water discharged to dewatering bags and dewatering structures

Enbridge installed Line 3 “hot crossing” of two pipelines in dewatered sheet pile and trench box area

Uncontrolled flow area expands with the removal of the sheet pile wall

February 20, 2021. IEM notes “turbid water discharge for five well points.”

Discussed with the lead inspector, environmental monitor, and ERM technical director

March 13, 2021. IEM documented sediment flow to wetlands and discussed with EI Team

March 15, 2021. IEM and Lead Env Inspector conducted site review and documented 2” of clay

March 16, 2021, Enbridge “issued an unacceptable report for improper dewatering structure” No cleanup and continued pumping

“Following months,” according to MNDNR, Enbridge cleaned sediment from wetland but did not resolve uncontrolled flow

Failure to identify the problem as uncontrolled flow or aquifer rupture

No notifications of Level 2 modifications or need for amended permits

June 4, 2021: MNDNR issues Amended Water Appropriations Permit #2018-3420 for 4,982,768,568 gallons, 9.8 times larger than the original permit request.

June 15, 2021, MNDNR staff discussed the potential for uncontrolled flow

June 16, 2021, MNDNR email to Enbridge requesting information on uncontrolled flow and restoration plan

On June 17, 2021, MNDNR noticed Enbridge not recommencing work at Clearbrook hot crossing until the uncontrolled flow plan was approved. (Note that the line segments were already completed by the time DNR sent notice.)

June 2021: Five unreported Frac-outs

July 7, 2021, Merjent disclosed 3.8 million gallons of uncontrolled flow since January and disclosed 45 ftX12 ft X18’ excavation and sheet pile installation response to 6-16 DNR request described as “findings of fact #13.”

July 8, 2021, Lead IEM and MNDNRr reviewed and summarized inspection reports to date and discovered the initial January 26 report and disclosure of completion of pipeline boring but no backfill due to uncontrolled flow.

July 8, 2021, Enbridge submitted Groundwater Investigation Plan to MNDNR for comment and review

Enbridge reported a second surface emergence of uncontrolled flow from outside the former sheet pile area 60 feet northwest of the original uncontrolled flow.

Enbridge reported uncontrolled overland flow at ground level elevation 1339. Surface flow is 28 feet above the artesian aquifer.

Uncontrolled flow created the risk of bank sloughing, road overtopping, and water quality concerns from the release of turbid water

Enbridge reported uncontrolled flow reached a nearby stream

Uncontrolled flow extends from Milepost 909.1 to 910

July 12, 2021, Enbridge submitted the revised GW Investigation Plan

On July 14, 2021, DNR informed Enbridge to deny the request to continue work in the area until the uncontrolled flow plan was approved.

July 27-Aug 4, 2021 Drilling 6 borings in area of uncontrolled flow. two borings penetrated the artesian aquifer

July 2021: 19 unreported frac-outs

August 1-4: Two unreported Frac-outs

Aug 5-Aug 21, 2021: water level monitoring

August 9: MNDNR reveals 28 unreported frac-outs from June 1 to August 4.

August 15, 2021, Draft Remedial Action Plan for ruptured aquifer submitted to MNDNR

Aug 17-18, 2021Enbridge/Barr Final Remedial Action Plan report on an uncontrolled flow mitigation plan

RAP shows fens are supported by upwelling artesian water

Uncontrolled flow is upgradient of fens

RAP proposes installing high-volume wells in the artesian aquifer to stop the flow at the surface and reduce upward pressure in the aquifer allowing grout injection into the ground to stop the flow

September 6, 2021. uncontrolled flow reported to be 24,200,000 gallons from January 21 to September 5, 227 days, (Avg flow of 106,608 gallons/day from an area measuring 1400 to 1650 square feet)

September 16, 2021, MNDNR Restoration and Replacement Order

By October 16, 2021, complete all work to stop the uncontrolled flow

Notify MNDNR Commissioner within 24 hours of completion

By October 16, 2021, Enbridge, to report a revised estimate of water loss from March 19 to September 16, must continue groundwater monitoring following cessation of flow.

By October 16, 2021, submit Draft Calcareous Fen Management Plan for MNDNR review and approval

By October 16, 2021. Submit \$250,000 in mitigation funds to MNDN for independent monitoring of calcareous fens

By October 16, 2021, Submit \$300,000 in mitigation funds to MNDNR for initial mitigation of direct loss of groundwater resources

By October 16, 2021. End of the appeal period.

By November 1, 2021, Submit \$2,750,000 on “one or more single order instruction escrows for the benefit of MNDNR to use at its sole discretion to provide funds to perform restoration actions” for fens and compensatory mitigation with conditions for withdrawal

The order provides for the addition of escrow funds if necessary

By December 1, 2021. Enbridge must demonstrate that it has visually reinspection all locations across the entirety of Line 3 where Enbridge deviated from planned or permitted construction trench depths. Must identify additional unidentified breaches of artesian aquifers.

Monitor for uncontrolled flow for 12 months after cessation of uncontrolled flow

Exhibit B

Permit Number

2018-3420
Amended

Water Appropriation Permit

Expiration Date: 06/04/2022

Pursuant to Minnesota Statutes, Chapter 103G, and on the basis of statements and information contained in the permit application, letters, maps, and plans submitted by the applicant and other supporting data, all of which are made part hereof by reference, **PERMISSION IS HEREBY GRANTED** to the applicant to perform actions as authorized below. This permit supersedes the original permit and all previous amendments.

Project Name: L3R GW Segments and Pump Stations	County: Clearwater, Hubbard, Cass, Aitkin, Kittson, St. Louis, Marshall, Red Lake, Polk	Watershed: Clearwater River; Mississippi River - Headwaters; Crow Wing River; Pine River; Mississippi River - Grand Rapids; Red River of the North - Tamarac River; St. Louis River; Snake River	Resource: Groundwater
Purpose of Permit:		Authorized Action:	

Construction Dewatering

Withdrawal of up to 4982.7 million gallons of water per year for construction dewatering.

Authorized actions at each construction dewatering spread are listed below.

All volume amounts and appropriation pumping rates must be followed.

A total of 4,982,768,568 gallons is authorized by this permit.

The permittee shall not exceed the total gallons authorized.

The spread installations are an estimate of the amount of construction dewatering needed at each installation.

- Installation #1: Pipeline trench from Minnesota/North Dakota border to Donaldson pump station, Kittson County (12.6 miles) – estimate of 31,448 gallons

- Installation #2: Donaldson pump station, Kittson County (0.10 miles) – estimate of 829,726 gallons

- Installation #3: Pipeline trench from Donaldson pump station to Viking pump station, Kittson & Marshall Counties (33.6 miles) – estimate of 1,466,134 gallons

- Installation #4: Viking pump station, Marshall County (0.10 miles) – estimate of 870,179 gallons

- Installation #5: Pipeline trench from Viking pump station to Plummer pump station, Marshall, Pennington & Red Lake Counties (28.8 miles) – estimate of 3,667,555 gallons

- Installation #6: Plummer pump station, Red Lake County (0.10 miles) – estimate of 1,065,538 gallons

- Installation #7: Pipeline trench from Plummer pump station to end of Construction Spread 1, Red Lake and Polk Counties, (19.1 miles) – estimate of 5,475,038 gallons

- Installation #8: Pipeline trench from end of Construction Spread 1 to Clearbrook Terminal, Polk & Clearwater Counties, (13.1 miles) – estimate of 9,063,781 gallons

- Installation #9: Clearbrook pump station, Clearwater County (0.10 miles) – estimate of 24,856,814 gallons

- Installation #10: Pipeline trench from Clearbrook pump station to Hubbard County line, Clearwater County (36.4 miles) – estimate of 784,197,013 gallons

- Installation #11: Pipeline trench from Hubbard County line to Two Inlets pump station, Hubbard County (13.3 miles) – estimate of 34,416,969 gallons

- Installation #12: Two Inlets pump station, Hubbard County (0.10 miles) – estimate of 896,473 gallons

- Installation #13: Pipeline trench from Two Inlets pump station

to end of Construction Spread 2, Hubbard County (9.0 miles) – estimate of 42,203,185 gallons

- Installation #14: Pipeline trench from end of Construction Spread 2 to Backus pump station, Hubbard, Cass & Wadena Counties (41.5 miles) – estimate of 2,837,033,847 gallons

- Installation #15: Backus pump station, Cass County (0.10 miles) – estimate of 44,965,514 gallons

- Installation #16: Pipeline trench from Backus pump station to end of Construction Spread 3, Cass & Crow Wing Counties (31.3 miles) – estimate of 244,752,992 gallons

- Installation #17: Pipeline trench from end of Construction Spread 3 to Swatara pump station, Cass & Aitkin Counties (6.9 miles) – estimate of 3,570,484 gallons

- Installation #18: Swatara pump station, Aitkin County (0.10 miles) – estimate of 4,077,316 gallons

- Installation #19: Pipeline trench from Swatara pump station to end of Construction Spread 4, Aitkin & St. Louis Counties (37.5 miles) – estimate of 128,663,927 gallons

- Installation #20: Pipeline trench from end of Construction Spread 4 to North Gowan pump station, St. Louis County (9.6 miles) – estimate of 230,024,353 gallons

- Installation #21: North Gowan pump station, St. Louis County (0.10 miles) – estimate of 1,685,052 gallons

- Installation #22: Pipeline trench from North Gowan pump station to Minnesota/Wisconsin border, St. Louis & Carlton Counties (34.1 miles) – estimate of 577,093,383 gallons

- Hill City pipeline maintenance station (PLM), Aitkin County -- estimate of 1,861,846 gallons

All appropriations from the above listed construction dewatering installations (spreads) will follow all relevant plans per the original final Application dated November 8, 2020 and the Environmental Protection Plan (EPP) received November 08, 2020. All changes in requested water volumes included in the permit amendment application dated May 12, 2021 and the updated Stormwater Pollution Prevention Plan (SWPPP) dated May 2021 required by the MPCA Construction Stormwater General Permit must be followed for this permit to be valid.

All installation volumes are estimates per the spreads and the total volume authorized is 4,982,768,568, the permittee is not allowed to go over the total volume authorized by this permit.

Permittee:

Authorized Agent:

ENBRIDGE ENERGY, LIMITED PARTNERSHIP
CONTACT: HAHN, BOBBY, (218) 522-4751
26 E SUPERIOR ST.
SUITE 125
DULUTH, MN 55802
(218) 464-5621

MERJENT, INC.
CONTACT: LENZ, KRISTIN, (763) 913-4740
1 MAIN STREET SE
SUITE 300
MINNEAPOLIS, MN 55414
(612) 746-3660

To Appropriate From:

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 319032m east, 5284954m north
NESE of Section 29, T149N, R37W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 335917m east, 5238205m north
SENE of Section 24, T144N, R36W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 337053m east, 5217752m north
NWNW of Section 29, T142N, R35W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 336583m east, 5203482m north
SESE of Section 6, T140N, R35W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 382773m east, 5181950m north
NESE of Section 12, T138N, R31W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 428061m east, 5189817m north
NWNW of Section 14, T139N, R26W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 438108m east, 5192494m north
SWNW of Section 2, T139N, R25W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 197299m east, 5402845m north
Section 4, T160N, R50E

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 497094m east, 5192819m north
NWSW of Section 20, T51N, R21W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 511379m east, 5189971m north
SENE of Section 34, T51N, R20W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 511384m east, 5189786m north
SENE of Section 34, T51N, R20W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 454059m east, 5204182m north
SESW of Section 14, T52N, R26W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 210009m east, 5387076m north
NWNW of Section 25, T159N, R49W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 244838m east, 5345488m north
SESE of Section 28, T155N, R45W

Sump : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 300417m east, 5294895m north
SWSW of Section 28, T150N, R39W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 337143m east, 5217783m north
NENW of Section 29, T142N, R35W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 382905m east, 5181869m north
SWSW of Section 7, T138N, R30W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 447690m east, 5190730m north
NWNE of Section 31, T51N, R26W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 210118m east, 5386991m north
NWNW of Section 25, T159N, R49W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking

UTM zone 15N, 244450m east, 5345588m north
SWSE of Section 28, T155N, R45W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 274106m east, 5310131m north
NENW of Section 15, T151N, R42W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 274133m east, 5310053m north
NENW of Section 15, T151N, R42W

Groundwater : by means of a portable pump at a rate not to exceed 800 gpm
Point(s) of Taking
UTM zone 15N, 319120m east, 5284952m north
NESE of Section 29, T149N, R37W

Issued Date: 06/04/2021		Effective Date: 06/04/2021		Expiration Date: 06/04/2022	
Authorized Issuer: Randall Doneen	Title: Conservation Assistance & Regulations Section Manager	Email Address: randall.doneen@state.mn.us		Phone Number: 651-259-5156	

This permit is granted **subject to** the following **CONDITIONS**:

LIMITATIONS: (a) Any violation of the terms and provisions of this permit and any appropriation of the waters of the state in excess of that authorized hereon shall constitute a violation of Minnesota Statutes, Chapter 103G. (b) This permit shall not be construed as establishing any priority of appropriation of waters of the state. (c) This permit is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its employees, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the Permittee relating to any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person other than the state against the Permittee, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the Permittee, for violation of or failure to comply with the provisions of the permit or applicable provisions of law. (d) In all cases where the doing by the Permittee of anything authorized by this permit shall involve the taking, using, or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the Permittee, before proceeding therewith, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights, and interests necessary therefore. (e) This permit shall not release the Permittee from any other permit requirements or liability or obligation imposed by Minnesota Statutes, Federal Law, or local ordinances relating thereto and shall remain in force subject to all conditions and limitations now or hereafter imposed by law. (f) Unless explicitly specified, this permit does not authorize any alterations of the beds or banks of any public (protected) waters or wetlands. A separate permit must be obtained from the Department of Natural Resources prior to any such alteration.

FLOW METER: The Permittee shall equip each installation for appropriating or using water with a flow meter, unless another method of measuring the quantity of water appropriated to within ten (10) percent of actual amount withdrawn is approved by the Department.

WATER USE REPORTING: Monthly records of the amount of water appropriated or used shall be recorded for each installation. Such readings and the total amount of water appropriated or used shall be reported annually to the Director of DNR Ecological and Water Resources, on or before February 15 of the following year, via the MNDNR Permitting and Reporting System (MPARS) at www.mndnr.gov/mpars/signin. Any processing fee required by law or rule shall be submitted with the records whether or not any water was appropriated during the year. Failure to report shall be sufficient cause for terminating the permit 30 days following written notice.

CONDITIONS (Continued from previous page)

MODIFICATION: The Permittee must notify the Commissioner in writing of any proposed changes to the existing permit. This permit shall not be modified without first obtaining the written permission from the Commissioner.

TRANSFER OR ASSIGNMENT: Any transfer or assignment of rights, or sale of property involved hereunder shall be reported within 90 days thereafter to the Director of DNR Ecological and Water Resources. Such notice shall be made by the transferee (i.e., new owner) and shall state the intention to continue the appropriation as stated in the permit. This permit shall not be transferred or assigned except with the written consent of the Commissioner.

COMMISSIONER'S AUTHORITY: (a) The Commissioner may inspect any installation utilized for the appropriation or use of water. The Permittee shall grant access to the site at all reasonable times and shall supply such information concerning such installation as the Commissioner may require. (b) The Commissioner may, as he/she deems necessary, require the Permittee to install gages and/or observation wells to monitor the impact of the Permittee's appropriation on the water resource and require the Permittee to pay necessary costs of installation and maintenance. (c) The Commissioner may restrict, suspend, amend, or cancel this permit in accordance with applicable laws and rules for any cause for the protection of public interests, or for violation of the provisions of this permit.

PUBLIC RECORD: All data, facts, plans, maps, applications, annual water use reports, and any additional information submitted as part of this permit, and this permit itself are part of the public record and are available for public inspection at the offices of DNR Ecological and Water Resources. The information contained therein may be used by the Division as it deems necessary. The submission of false data, statements, reports, or any such additional information, at any time shall be deemed as just grounds for revocation of this permit.

MONITORING REQUIREMENTS: Minnesota Statutes 103G.282 authorizes the Department of Natural Resources to require permittees to install and maintain monitoring equipment to evaluate water resource impacts from permitted appropriations. You may be required to modify or install automated measuring devices and keep records for each installation. The frequency of measurements and other requirements will be based on quantity of water appropriated, source of water, potential connections to other water resources, nature of concern, and other relevant factors.

DROUGHT PLANNING: In accordance with M.S. 103G.293, all permits must be consistent with the drought response plan detailed in the Statewide Drought Plan at http://files.dnr.state.mn.us/natural_resources/climate/drought/drought_plan_matrix.pdf.

LAND NOT OWNED BY PERMITTEE : This permit authorizes appropriation of water from land that is not owned by the permittee. The volume authorized is valid only as long as an agreement is in effect for lands included under this permit that are not owned by the permittee.

WELL SEALING: The permittee shall notify the Minnesota Department of Health prior to sealing, removing, covering, plugging or filling the well(s) from which the authorized appropriation was made. The well(s) must be sealed by a licensed well driller and in accordance with the procedures required under Minnesota Statutes 103I and Minnesota Rules 4725 as administered by the Minnesota Department of Health.

WATER USE CONFLICT: If notified by the DNR that a water use conflict is suspected and probable from your appropriation, based on confirmation of a formal well interference complaint or a preliminary hydrologic assessment, all appropriation authorized by this permit must cease immediately until the interference is resolved. The permittee may be required to obtain additional data to support the technical analysis, such as domestic well information within a radius of one and one-half miles of the production well. The permittee and impacted party may engage in a negotiated settlement process and there may be modifications made to this permit in support of conflict resolution.

SUSPENSION: The Department may require the suspension of appropriation during periods of low water in order to maintain minimum water levels within the basin/watercourse/watershed.

CONTINGENCY: If directed by DNR Ecological and Water Resources to cease pumping, the permittee agrees to withstand the results of no appropriation as stated in the contingency statement submitted with the application.

INTAKE: All pump intakes must be screened to prevent fish from being drawn into the system.

INVASIVE SPECIES - EQUIPMENT DECONTAMINATION: All equipment intended for use at a project site must be free of prohibited invasive species and aquatic plants prior to being transported into or within the state and placed into state waters. All equipment used in designated infested waters, shall be inspected by the Permittee or their authorized agent and adequately decontaminated prior to being transported from the worksite. The DNR is available to train inspectors and/or assist in these inspections. For more information refer to the "Best Practices for Preventing the Spread of Aquatic

CONDITIONS (Continued from previous page)

Invasive Species" at http://files.dnr.state.mn.us/publications/ewr/invasives/ais/best_practices_for_prevention_ais.pdf. Contact your regional Invasive Species Specialist for assistance at www.mndnr.gov/invasives/contacts.html. A list of designated infested waters is available at www.mndnr.gov/invasives/ais/infested.html. A list of prohibited invasive species is available at www.mndnr.gov/invasives/laws.html#prohibited.

INFESTED WATERS - WATER TREATMENT REQUIREMENTS: Surface water appropriation from waters listed as containing invasive species (see <http://www.mndnr.gov/invasives/ais/infested.html>) are required to contact 651-259-5100 or 1-888-MINN-DNR to obtain information from the DNR Division of Ecological and Water Resources on specific invasive species water treatment requirements.

WATER CONSERVATION: All practical and feasible water conservation methods and practices must be employed to promote sound water management and use the least amount of water necessary, such as reuse and recycling water, water-saving devices, and water storage.

DISCHARGE AUTHORIZATION: This permit is valid only in conjunction with all required discharge authorizations from local, state, or federal government units.

CONSTRUCTION DEWATERING DISCHARGES: No discharges are allowed at known state-listed threatened and endangered species location. All discharges should be completed per the specifics in the Environmental Protection Plan (EPP) dated November 2020, received on November 08, 2020. Dewatering activities will be conducted as described in the Construction Stormwater general permit and the revised May 2021 SWPPP, approved by MPCA and as described in the June 3, 2021 letter "Supplemental Information for an Individual Water Appropriation Permit Amendment for Construction Dewatering Reference No. 2018-3420". There shall be continuous on-site monitoring of dewatering activities by qualified staff to ensure that discharges prevent aquatic habitat degradation.

TIMING DEVICES AND FLOW METERS: All pumps in the construction trench must be instrumented with timing devices or flow meters. All pumps used at the pump station facilities and well point systems must be instrumented with flow meters. Timing devices are not allowed at the pump station facilities and well point systems as authorized under this permit.

APPROPRIATION AND DISCHARGE RATES: All appropriation and discharge pump rates in construction dewatering trenches and the pump station facilities must be between 400 gallons per minute (gpm) and 800 gpm. Pump rates must not exceed 800 gpm. Appropriation and discharge pump rates for the well point systems must be set to a maximum of 1,500 gpm.

CHESTER 24 FEN PIEZOMETER AND MONITORING: The permittee shall monitor the existing well nest installed by Enbridge near the RSV8 valve site on June 21, 2020. The well and piezometer should be instrumented at least a day before dewatering for Line 3 construction starts with a datalogger programmed to take water levels every minute. A vented logger is preferred but an absolute logger paired with a barologger on site, taking measurements at the same frequency, is acceptable. The exact time of the start and end of dewatering in the area should be noted. Water levels should be collected in this well nest until they recover to pre-pumping levels or after construction is completed and the area is restored; whichever is longer. The piezometer construction information (well depth, screen length, casing length, top of casing elevation, and well boring record), water level data, pump on/off times, pumping rates and volumes, along with the length of pumping (time) should be submitted to DNR following completion of the project. Once water levels recover, and with DNR prior approval, the piezometer and well could then be properly abandoned. If further information or coordination is needed on installing and monitoring this piezometer, please contact Michele Walker, DNR Hydrologist, michele.walker@state.mn.us, 218-308-2464.

cc: Tom Groshens, EWR District Manager
Simonson, Barry, Contact; Enbridge Energy, Limited Partnership
Ronayne, Angela, Contact; Merjent, Inc.
Lipps, Hannah, Contact; Merjent, Inc.
Hansen, Shannon, Contact; Merjent, Inc.
Fisher, Linda, Contact; Merjent, Inc.
Mike Findorff, MPCA
Mike Kelly, DNR Fisheries, Park Rapids Area
Edie Everts, DNR Fisheries, Bemidji Area
Thomas Hutchins, Conservation Officers, Crookston
Jeremy Woinarowicz, Conservation Officers, Thief River Falls #1
Jacob Willis, Conservation Officers, Brookston
Ryan Brown, Conservation Officers, Karlstad
Taylor Hochstein, Conservation Officers, Hill City
Calie Kunst, Conservation Officers, Remer
Chelsey Best, Conservation Officers, Pequot Lakes
Nick Baum, Conservation Officers, Park Rapids
Hannah Mishler, Conservation Officers, Bemidji #2
Tim Gray, Conservation Officers, Bagley
Kevin Molloy, MPCA
Steve Hofstad, BWSR Wetland Specialists, Polk
Steve Hofstad, BWSR Wetland Specialists, Red Lake
Matt Johnson, BWSR Wetland Specialists, Marshall
Erin Loeffler, BWSR Wetland Specialists, St. Louis
David Demmer, BWSR Wetland Specialists, St. Louis
Matt Johnson, BWSR Wetland Specialists, Kittson
David Demmer, BWSR Wetland Specialists, Aitkin
Matt Johnson, BWSR Wetland Specialists, Cass
Matt Johnson, BWSR Wetland Specialists, Hubbard
Matt Johnson, BWSR Wetland Specialists, Clearwater
Andrew Herberg, DNR Regional Nongame Specialists, Region 2
Gaea Crozier, DNR Regional Nongame Specialists, Region 2
Amy Westmark, DNR Regional Nongame Specialists, Region 1
Margi Coyle, DNR Regional Environmental Assessment Ecologist, Region 2
Jaime Thibodeaux, DNR Regional Environmental Assessment Ecologist, Region 1
Emily Hutchins, DNR Wildlife, Crookston
Doug Franke, DNR Wildlife, Thief River Falls
Chris Balzer, DNR Wildlife, Cloquet
Jason Wollin, DNR Wildlife, Karlstad
Russ Reisz, DNR Wildlife, Aitkin
Christine Reisz, DNR Wildlife, Brainerd
Erik Thorson, DNR Wildlife, Park Rapids
Nathan Olson, DNR Fisheries, Detroit Lakes Area
Deserae Hendrickson, DNR Fisheries, Duluth Area
Phil Talmage, DNR Fisheries, Baudette Area
Rick Bruesewitz, DNR Fisheries, Aitkin Area
Marc Bacigalupi, DNR Fisheries, Brainerd Area
Jake Snyder, County, Polk
Kurt Casavan, County, Red Lake
Josh Johnston, County, Marshall
Mark Lindhorst, County, St. Louis
Barb O'Hara, County, Kittson
Becky Sovde, County, Aitkin
Andrew Carlstrom, County, Aitkin
John Ringle, County, Cass
Scott Navratil, County, Cass
Kelly Condiff, County, Cass
Jenny Blue, County, Cass

Levy Bergstrom, County, Cass
Eric Buitenwerf, County, Hubbard
Daniel Hecht, County, Clearwater
Kyle Schломann, Watershed District, Middle Snake Tamarac WD
Danny Omdahl, Watershed District, Middle Snake Tamarac WD
Morteza Maher, Watershed District, Middle Snake Tamarac WD
Dan Money, Watershed District, Two Rivers WD
Myron Jesme, Watershed District, Red Lake WD
Corps of Engineers, Corps of Engineers, Polk
Corps of Engineers, Corps of Engineers, Red Lake
Corps of Engineers, Corps of Engineers, Marshall
Corps of Engineers, Corps of Engineers, St. Louis (South)
Corps of Engineers, Corps of Engineers, Kittson
Corps of Engineers, Corps of Engineers, Aitkin
Corps of Engineers, Corps of Engineers, Cass
Corps of Engineers, Corps of Engineers, Hubbard
Corps of Engineers, Corps of Engineers, Clearwater
Rachel Klein, SWCD, East Polk SWCD
Tanya Hanson, SWCD, Red Lake SWCD
Danny Thorstad, SWCD, Marshall SWCD
R.C. Boheim, SWCD, St. Louis SWCD - South
Justin Muller, SWCD, Kittson SWCD
Steven Hughes, SWCD, Aitkin SWCD
John Ringle, SWCD, Cass SWCD
Jessica Manifold, SWCD, Cass SWCD
Kelly Condiff, SWCD, Cass SWCD
Crystal Mathisrud, SWCD, Hubbard SWCD
Chester Powell, SWCD, Clearwater SWCD
Lori Buell, SWCD, Clearwater SWCD

Exhibit C

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DNR Orders Enbridge Energy to Pay \$3.32 Million for Failure to Follow Environmental Laws

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Minnesota Department of Natural Resources Orders Enbridge Energy to Pay \$3.32 Million for Failure to Follow Environmental Laws

The Minnesota Department of Natural Resources (DNR) has ordered Enbridge Energy to pay \$3.32 million for failure to follow environmental laws. Enbridge breached the confining layer of an artesian aquifer, resulting in an unauthorized groundwater appropriation during the construction of the Line 3 replacement project near Enbridge's Clearbrook Terminal.

DNR's civil enforcement orders require Enbridge to pay mitigation and penalty funds of \$3.32 million. This includes a restoration order requiring \$300,000 in initial mitigation funds to pay for the loss of groundwater resources, \$250,000 for DNR monitoring of calcareous fen wetlands near the area of the aquifer breach and a \$20,000 administrative penalty order (the maximum allowed under state law). The DNR has also ordered Enbridge to place \$2,750,000 in escrow for restoration and mitigation of any damage to the calcareous fen wetlands. DNR will determine what restoration and mitigation is required.

DNR's restoration order also requires Enbridge to implement a restoration plan to stop the unauthorized groundwater flow within 30 days. The order

requires the company to conduct additional groundwater and site monitoring and report the results, as well as to develop a Calcareous Fen Management Plan. Additionally, to ensure that violations haven't occurred elsewhere, the DNR is requiring Enbridge to fund a re-inspection of any and all areas along the entire route where construction depths deviated from plans (as they did at the Clearbrook Terminal site).

Separately, the DNR has also referred this matter to the Clearwater County Attorney for criminal prosecution. The DNR has determined that Enbridge Energy violated Minnesota Statute 103G.141, subdivision 1, which makes it a crime to appropriate "waters of the state without previously obtaining a permit from the commissioner."

The criminal referral and civil enforcement orders resulted from an investigation of Line 3 construction activities near Enbridge's Clearbrook Terminal. Should the company violate the DNR's restoration order, it would be subject to additional misdemeanor charges under state law.

"DNR is committed to its role as a regulator on this project and is taking seriously our responsibility to protect and manage natural resources within existing state law," said DNR Commissioner Sarah Strommen. "Enbridge's actions are clear violations of state law and also of public trust. This never should have happened, and we are holding the company fully accountable."

Background

Enbridge began work at the Clearbrook Terminal site in early 2021 but did not follow the construction plans it had provided to DNR. The DNR relied upon these plans in determining that proposed work at the Clearbrook Terminal could proceed without effecting nearby calcareous fen wetlands. A calcareous fen is a unique type of wetland, with stringent statutory protections, that relies upon upwelling of mineral rich groundwater to thrive. The company's plans called for the use of traditional trench construction methods at a depth of 8-10 feet. The company instead constructed the trench at a depth of approximately 18 feet with sheet piling installed to a depth of 28 feet. This deviation led to a breach of the confining layer of an artesian aquifer, resulting in an uncontrolled flow of groundwater into the trench. Enbridge failed to notify DNR of the groundwater situation at the Clearbrook Terminal.

Independent Environmental Monitors (IEMs), working on behalf of DNR and Minnesota Pollution Control Agency (MPCA), first observed unusual amounts of water in the trench at the construction site in late January 2021. This and subsequent inspections over the next several months focused on managing the water in the trench. Under the Public Utilities Commission's (PUC) route permit, the IEMs' role is to monitor compliance with the terms and conditions of the PUC, DNR, and MPCA permits. They do not monitor

construction plans. Therefore, these inspections did not identify that Enbridge's construction activities had deviated from the company's plans, breaching the aquifer's confining layer.

On June 15, 2021, during discussions with the IEMs, the DNR identified that there was a potential breach of the aquifer's confining layer at the Clearbrook Terminal construction site. The DNR immediately commenced an investigation and informed Enbridge that it must suspend construction at the location until DNR had approved a plan to stop the flow of groundwater. Resolving an uncontrolled flow from an artesian aquifer is technically complex and requires good data and a comprehensive plan. The DNR required Enbridge to investigate the groundwater conditions at the site and submit a plan to correct the unauthorized flow conditions. On July 8, Enbridge submitted a Groundwater Investigation Plan that the DNR approved in revised form on July 12. On August 15, using the results of the groundwater investigation, Enbridge submitted a Remedial Action Plan outlining actions needed to stop the groundwater flow conditions. The DNR approved this plan on August 18.

Through September 5, 2021, this violation has resulted in an estimated release of approximately 24.2 million gallons of groundwater from the aquifer. This water has been pumped from the trench, treated to remove sediment and released to a nearby wetland.

[Restoration Order Enbridge Energy 09/16/21](#) (PDF)

[Administrative Penalty Order Enbridge Energy 09/16/21](#) (PDF)

[Learn More](#)



Minnesota Department of Natural Resources | mndnr.gov
Email us: info.dnr@state.mn.us | Call 651-296-6157 or 888-646-6367



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Exhibit D

Exhibit E



September 16, 2021

VIA EMAIL TO LEO.GOLDEN@ENBRIDGE.COM ON SEPT. 16, 2021
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED ON SEPT. 17, 2021

Leo Golden
Vice President, Major Projects
Enbridge Energy, LLP
26 East Superior Street
Suite 125
Duluth, Minnesota 55802

RE: Administrative Penalty Order
Line 3 Replacement Project

Dear Mr. Golden:

The Department of Natural Resources (“DNR”) is issuing the enclosed Administrative Penalty Order (APO) to Enbridge Energy, Limited Partnership for violations of Minnesota’s natural resource laws. Please read the APO carefully. You must take action within 30 days after you receive this letter. **You must take corrective action and document your corrective action to the DNR, or you must pay the invoiced amount, however, failure to take the required corrective action may result in the issuance of additional penalties. If DNR determines your corrective action is not sufficient, you must pay the invoiced amount within 20 days of receipt of the non-sufficiency notice from the DNR.**

You have a right to formally dispute this action within 30 days after receiving the APO. Instructions are in the RIGHT TO REVIEW section of the APO.

If you have questions or need assistance, contact me by phone at (651) 259-5119 or by email at ann.pierce@state.mn.us.

Sincerely,

Ann Pierce
Deputy Division Director
Ecological and Water Resources

Enclosure: Administrative Penalty Order

cc: Sherry Enzler, General Counsel
Jill Nguyen, Senior Staff Attorney

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE PENALTY ORDER

Enbridge Energy, Limited Partnership
26 East Superior Street
Suite 125
Duluth, Minnesota 55802

APO-001

Line 3 Replacement Project

This Administrative Penalty Order (APO) is issued by the Department of Natural Resources (DNR) Commissioner pursuant to Minn. Stat. § 103G.299 for the violations listed below. This APO requires Enbridge Energy, Limited Partnership (Enbridge) or (Regulated Party) to take action to correct the violations.

* * * * *

VIOLATIONS

1. 103G.271 APPROPRIATION AND USE OF WATERS.

Subdivision 1. **Permit required.** (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water-use permit from the commissioner.

Subd. 4. Minimum-use exemption and local approval of low-use permits.

(a) Except for local permits under section 103B.211, subdivision 4, a water-use permit is not required for the appropriation and use of less than 10,000 gallons per day and totaling no more than 1,000,000 gallons per year, except as required by the commissioner under section 103G.287, subdivision 4, paragraph (b).

103G.287 GROUNDWATER APPROPRIATIONS.

Subd. 5. **Sustainability standard.** The commissioner may issue water-use permits for appropriation from groundwater only if the commissioner determines that the groundwater use is sustainable to supply the needs of future generations and the proposed use will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells constructed according to Minnesota Rules, chapter 4725.

Beginning on about January 21, 2021, and continuing through the date of this APO, Enbridge has violated Minn. Stat. § 103G.271 and Minn. Stat. § 103G.287 Subd. 5 by the ongoing appropriation or use of 10,000 or more gallons per day or more than one million gallons per year of waters of the state without a water appropriation permit. By breaching the confining layer of an artesian aquifer, Enbridge caused an uncontrolled release of groundwater (uncontrolled flow) during the construction of the Line 3 Pipeline Replacement Project ("Project") at or near the Clearbrook Terminal, in Clearwater County Minnesota. This uncontrolled flow is not authorized by any of Enbridge's water appropriation permits for the Project and Enbridge failed to notify the DNR that the breach of the aquifer had occurred. The estimated volume of the uncontrolled flow is 24.2 million gallons through September 5, 2021.

The unpermitted appropriation of groundwater is a waste of Minnesota's water resources and threatens to harm or degrade the Leon 33 calcareous fen (Steenerson and Deep Lake Fens) and two public waters, Deep Lake (ID15009000) and Steenerson Lake (ID15008900).

2. 103G.223 CALCAREOUS FENS.

(a) Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary or as provided in paragraph (b). Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

(b) The commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan.

Beginning on about January 21, 2021, and continuing through the date of this APO, Enbridge has violated Minn. Stat. § 103G.223 by causing reductions in groundwater resources available to the Leon 33 calcareous fen (Steenerson and Deep Lake Fens) (calcareous fens) without an approved calcareous fen management plan. In 2020, Enbridge informed DNR, in its request for a no effect concurrence, that its construction activities were unlikely to negatively impact the nearby calcareous fens because Enbridge intended to excavate about an eight foot deep trench. Instead, when Enbridge constructed the pipeline at or near the Clearbrook Terminal, Enbridge excavated an eighteen foot deep trench and installed sheet piling to a depth of 28 feet. Because Enbridge deviated from its plans, Enbridge breached an artesian aquifer, causing uncontrolled flow of groundwater. The uncontrolled flow affects the same aquifer that upwells into the Leon 33 calcareous fen (Steenerson and Deep Lake Fens) and is located approximately 4,800 feet northwest of the calcareous fens. Enbridge failed to submit a calcareous fen management plan for DNR approval prior conducting an activity that may drain, or otherwise degrade, wholly or partially, a calcareous fen.

CORRECTIVE ACTION REQUIRED

Pursuant to Minn. Stat. § 103G.299, Subd. 4, the Regulated Party is required to correct all the violations listed in this APO. The Regulated Party must document to the Commissioner, within 30 days after receipt of this APO and in writing that the Regulated Party has taken the corrective actions listed below, unless the Regulated Party seeks review of this APO as described below (Right to Review).

1. Complete all restoration work according to the DNR approved Remedial Action Plan dated August 18, 2021 to stop the uncontrolled flow. If this plan does not succeed in stopping the uncontrolled flow, additional measures will be required to address conditions at the site.
2. Enbridge must contact the DNR Director of Ecological and Water Resources within 24 hours of successfully completing the work to stop the uncontrolled flow.

3. Enbridge shall;
 - a. Provide the DNR with a revised estimate of water loss from March 19, 2021, to the date of this APO. This estimate must be within +/- 10 percent of actual loss.
 - b. Submit to the DNR documentation of the ongoing measurement of discharge rates required under the Remedial Action Plan. These measurements must include the current flow rate and any changes in flow rates. These measurements must continue until the uncontrolled flow is stopped. Documentation of the method of measurement must also be submitted to DNR. These measurements must be within +/- 10 percent of actual flow rates.
 - c. Submit for DNR's approval a plan to continue to monitor groundwater for a 12-month period following cessation of the uncontrolled flow. The plan shall include all pertinent methodological information and a schedule for reporting results to the DNR. The duration of required groundwater monitoring may be extended at the DNR's sole discretion.

Submit for DNR's approval a plan to conduct visual monitoring for break-through groundwater discharges for a 12-month period following cessation of the uncontrolled flow. The plan shall include all pertinent methodological information and a schedule for reporting results to the DNR. The duration of required visual monitoring may be extended at the DNR's sole discretion.
4. Enbridge must submit a draft Calcareous Fen Management Plan (CFMP) for DNR review and approval. This plan must include a description of ongoing monitoring of water levels and the plant communities that will occur to determine if the loss of water has impacted the nearby Leon 33 calcareous fen (Steenerson and Deep Lake Fens). The plan must provide site access for the DNR and/or its contractors to conduct and observe onsite fen monitoring activities. The plan must also provide access for Tribal monitors to observe fen monitoring activities if they choose to participate. The results of monitoring after implementation of the Remedial Action Plan and Calcareous Fen Management Plan may result in additional requirements, restoration and/or mitigation as directed by the DNR.

If the Enbridge has any questions about the corrective actions required, please contact the DNR staff person identified below for assistance.

PENALTY: \$ 20,000.00

The Regulated Party is hereby assessed a penalty of \$20,000.00 for the violations cited above. In determining the amount of the penalty, the Commissioner considered whether Regulated Party gained economic benefit as a result of the violation, whether there is a history of past violations, the number of violations, and the gravity of the violations, including the potential harm caused by the violation, the deviation from compliance, the potential damage to the public interest, the potential damage to natural resources of the state and other factors as justice may require. The DNR determined that these violations represent a severe potential for harm because the ongoing and unpermitted appropriation has caused a reduction in groundwater resources available to calcareous fen, which are rare natural resource, as well as other nearby public waters and because Enbridge failed to report the incident and take timely action to stop the uncontrolled flow.

Pursuant to Minn. Stat. § 103G.299, Subd. 5, if the Regulated Party performs and documents all the corrective action requirements listed above to the satisfaction of the Commissioner, within 30 days after the receipt of the APO the penalty shall be:

FORGIVABLE: \$20,000.00

If the Regulated Party fails to perform and document all of the corrective action requirements listed above to the satisfaction of the Commissioner, within 30 days after receipt of the APO, the \$20,000 penalty plus shall be immediately due and payable in accordance with the requirements of Minn. Stat. § 103G.299, Subd. 5. Interest, at the rate established in section 549.09, begins to accrue on penalties on the 31st day after the order with the penalty was received. Payment shall be made by check payable to the Minnesota Department of Natural Resources within 31 days after receipt of the APO unless the Regulated Party seeks review of this APO. The check should be mailed to the attention of Randall Doneen, Supervisor Conservation Assistance and Regulation, Minnesota Department of Natural Resources, 500 LaFayette Road, St. Paul, MN 55155. Mailed payments will be deemed to have been remitted on the 31st day after receipt of the APO if they are postmarked on the 31st day after receipt of the APO.

RIGHT TO REVIEW

Pursuant to Minn. Stat. § 103G.299, subds. 6 and 7, the Regulated Party has a right to seek review of this APO. The following description is intended only to aid the Regulated Party’s understanding of the review process and does not constitute legal advice. The Commissioner strongly advises the Regulated Party to review the law itself carefully before proceeding. A decision by Enbridge to contest this APO will not be deemed to have stayed or relieved Enbridge of any other obligations or corrective actions issued by the DNR pursuant to Minn. Stat. §§ 103G.2372, 103G.251, and 103G.141.

The Regulated Party has a right to have an expedited hearing before an administrative law judge to contest this APO or the Commissioner’s determination that the Regulated Party’s corrective action was unsatisfactory.

EXPEDITED HEARING (Administrative Law Judge Hearing) - To obtain an expedited hearing, the following steps must be taken in a timely manner:

- the Regulated Party must request review within 30 days after receipt of this APO or within 20 days after receipt of the Commissioner’s determination that the Regulated Party’s corrective action is unsatisfactory. The Regulated Party must ensure that any review request is received by the DNR before 4:30 p.m. on the last day of the 30-day period if the Regulated Party is contesting the issuance of the APO and before 4:30 on the last day of the 20-day period if the Regulated Party is contesting a determination that the corrective action was unsatisfactory. The 30-day period begins the first calendar day after the Regulated Party receives the APO. The 20 day period begins the first calendar day after the Regulated Party receives the corrective action determination. If the appeal period ends on a weekend or holiday, the appeal period is extended to 4:30 p.m. on the next day the DNR is open for business;
- the request must be in writing;
- the request may be sent by U.S. mail;

- the request must identify the APO or the corrective action determination that the Regulated Party wants to contest and must specifically state the reasons why the Regulated Party wants the APO to be reviewed, including any facts upon which the Regulated Party relies;
- the Regulated Party must send or deliver the request to the DNR at the following address: General Counsel, Minnesota Department of Natural Resources, 500 Lafayette Road North, St. Paul, Minnesota 55155.; and
- to ensure expeditious processing of the request, please send or deliver copies of the request to: Randall Doneen, Supervisor Conservation Assistance and Regulation, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota, 55155 and to Oliver Larson, Manager, Natural Resources Division, Attorney General’s Office, Bremer Tower, 445 Minnesota Street, Suite 900, St. Paul, Minnesota, 55101-2127.

The DNR will schedule an expedited hearing at the Office of Administrative Hearings if the above steps are completed in the time frames indicated.

In the case of an expedited hearing, if the Regulated Party’s request is found to be frivolous or filed solely for the purpose of delay, the Regulated Party may be required to pay the cost of the administrative hearing in addition to the administrative penalty.

This APO becomes a final order after 30 days unless the Regulated Party requests a hearing as provided above. If the Regulated Party fails to comply with the APO when it is a final order, the DNR may collect the penalty in any manner provided by law for the collection of a debt.

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES**

September 16, 2021

Date signed

Ann Pierce
Deputy Division Director
Ecological and Water Resources

Address questions and submittals requested above to:

Randall Doneen Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155
651-259-5156
randall.doneen@state.mn.us

Exhibit F

Exhibit G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RED LAKE BAND OF CHIPPEWA INDIANS,
WHITE EARTH BAND OF OJIBWE, HONOR
THE EARTH, and SIERRA CLUB,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS,

Defendant.

Case No. 1:20-cv-3817

**DECLARATION OF WINONA LADUKE IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

I, Winona LaDuke, declare and state as follows:

1. My name is Winona LaDuke. I am 61 years old, a mother of six and grandmother of nine. I am a widow, and I am the primary source of support for much of my extended family.

2. I am an enrolled member of the Minnesota Chippewa Tribe. The White Earth Band of Ojibwe (“White Earth”) is one of six Chippewa bands comprising the Minnesota Chippewa Tribe, and I have spent most of my life on the White Earth Reservation.

3. In 1993, I helped to found Honor the Earth in response to the pressing need for national work on environmental issues facing Native people. Today, I serve as Honor the Earth's Executive Director.

4. Honor the Earth is an Indigenous-led organization that centers its work around advocating for and providing financial support to Native communities. Honor the Earth works with Indigenous peoples in the United States and around the world, including Indigenous communities harmed by the so-called pipeline "replacement" project at issue in this case ("Line 3 Project"). In Honor the Earth's more than 25 years of operation, Honor the Earth has re-granted more than two million dollars to over 200 Native American communities.

5. Honor the Earth has participated in other water quality litigation as an amicus due to tribal concerns about excessive row crop farms, fertilizer and pesticide use, and the changing of the characteristics of the natural landscape from forests to crop production, which also draws much underground water for nourishment.

6. With our White Earth community, I also created the White Earth Land Recovery Project 31 years ago because it is extremely difficult for people without land to be able to carry on our agricultural and harvesting traditions. Over the past three decades, we have been able to secure 1400 acres of land held as a land trust within the reservation. Additionally, culturally significant land is held outside of the reservation boundaries in the 1855 treaty territory.

7. I am a traditional harvester of wild rice, medicinal plants, maple syrup, fish and other animals, and I live from this land. Indakiingimin. This is the land to which I belong.

8. I have been a member of the Midewin society, our healing and religious society, for most of my life. I am responsible for preserving cultural traditions including our language. Our mino-bimaatisiwin, the good life. I continue to practice and live within the instructions of my ancestors and carry on those traditions for future generations.

9. I attended Harvard University and have a degree in economics. I was a vice-presidential candidate in 1996 and 2000 with the Green Party, serving as the running mate for Ralph Nader.

10. I have studied many disciplines in an effort to help improve economic circumstances for the Chippewas or Anishinaabe people, and I have been an active ceremonial and cultural member of my community. I am also a member of the 1855 Treaty Authority and a part of the group that helped create the Rights of Manoomin tribal code for the 1855 Ceded territory.

11. The Anishinaabe universe is made up of layers above and layers below, and it consists of land and waters. Our world is half water and half land, and as such our dodaem, or clan systems and teachings, comprise those of water, land, and air. The waters or Midewaaboo of our territory—including the waters of lakes, rivers, and underground springs—are full of manitoowag, or spirits, with whom we reaffirm our relationship through ceremony throughout the year.

12. In 2014, when I became aware of a prior pipeline project—known as the Sandpiper pipeline—proposed by Enbridge Energy, Limited Partnership (“Enbridge”), the company at issue in this case, Honor the Earth immediately engaged as a party at the Minnesota Public Utilities Commission (“PUC”). Part of the Sandpiper pipeline’s route is identical to the original Line 3 route.

13. I am deeply concerned and afraid that Enbridge is preparing to ram the Line 3 Project through before the Chippewas have fully exercised our rights of appeals and legal challenges to an obviously flawed environmental review process. In fact, I see that happening already. Although Enbridge should have a cultural resource monitor ahead of any pipeline work, we have already observed that no such person has been present on the banks of the Mississippi River.

14. On behalf of Honor the Earth, I worked very hard with residents of the White Earth Reservation and members of the Minnesota Chippewa Tribe to develop the Anishinaabe Cumulative Impact Assessment (“ACIA”) for the Line 3 Project and pipeline route. This was intended to provide the lens of the Anishinaabe people and to begin to articulate the complexity of the interconnected Anishinaabe Akiing world for the state and federal regulatory process. The ACIA was filed with the PUC in 2018. Red Lake, White Earth, and the 1855 Treaty Authority adopted resolutions choosing the No Build alternative from the ACIA and filed and gave notice to the PUC.

15. The Chippewas of the Mississippi have forever depended on the natural fresh waters of the upper Mississippi River itself and all the interconnected water systems for our sustenance and economic livelihood. Within and in close proximity to these waters, I

and my fellow tribal members hunt large and small game, migratory waterfowl, and fish of many species and kinds; we gather wild rice and other edible plants, harvest medicinal plants, and make maple syrup for food and for sale. This land is the medicine chest of the Anishinaabe and represents some of the most biodiverse parts of Minnesota and the Great Lakes region.

16. The Line 3 Project's path crosses hundreds of streams, rivers, wetlands, and aquifers in this area. Construction and operation of the Line 3 Project, as permitted by the U.S. Army Corps of Engineers ("the Corps"), will imminently and permanently damage the freshwater resources that are essential to sustain my and my fellow tribal members' treaty reserve foods of wild rice, fish, and maple syrup. Wild rice is the most important part of the Chippewa traditions, and it is central to our cultural practices and spirituality.

17. If the Line 3 Project is not immediately stopped, and the Corps' permit remains in place, Honor the Earth likely will divert significant financial resources to Native American communities that will be harmed to help them protect their legal, environmental, and cultural interests in the hundreds of acres of waterbodies and wetlands that will be damaged or destroyed by the pipeline's construction and operation. As a result, Honor the Earth will be unable to invest in other Indigenous communities that are also in critical need of help and resources.

18. I am aware that pipeline construction workers at Standing Rock bulldozed land to construct a pipeline before a legally valid environmental review process had been completed. I am afraid that history will repeat itself here. In fact, the problem already

has begun. Enbridge's initial moves in constructing sections of the Line 3 Project are creating a swath of destruction moving towards our rivers including the Shell, Crow Wing, Willow, and Mississippi.

19. I am afraid for my children and grandchildren, and I particularly fear that the gifts from the Creator are being put into extreme danger and risk by this pipeline. The pipeline will have tremendously negative environmental impacts on our incredibly abundant freshwater resources and more. Water and oil do not coexist, and this territory is the land of life and spirits.

20. I am particularly anxious and fearful about the Line 3 Project because I know that the existing pipeline caused the largest inland oil spill in U.S. history in Grand Rapids, Minnesota, in 1991. Enbridge also set fire to an oil spill near the Mississippi river in Cohasset to try to control it, with devastating effects, in Minnesota in 2002. And the Enbridge pipeline at Clearbrook had a fire and explosion during repair work that killed individuals in 2007. In addition, I am distinctly aware of the Kalamazoo oil spill that occurred in 2010, when an Enbridge-operated pipeline burst. And I know that in 2018, TC Energy's Keystone pipeline was responsible for a 383,000 gallon leak of tar sands oil in North Dakota, just as experts predicted.

21. I think everybody who is aware of this damning history and Enbridge's terrible record should choose to stand with the water, the land, and our environment to support the ecosystems on which we rely. Every part of our Anishinabe natural world in northern Minnesota is being put at risk by new pipelines.

22. I know the Corps did not do an environmental impact statement under the National Environmental Protection Act to rigorously assess the damage this pipeline construction project will cause. I am very concerned that the Corps, which approved the permits at stake in this case, has no adequate mechanism for holding Enbridge accountable and, thus, has created a dangerous situation for our Anishinaabe communities.

23. More than that, the approval has resulted in the influx of thousands of temporary workers, mostly from out of state, into our high risk Anishinaabe communities during a pandemic. I am stressed by the fact that the Corps apparently thinks that Enbridge workers are more important than tribal impacts and protecting the people of Red Lake and White Earth from COVID-19, protecting our treaty rights, preserving our clean water, and reducing climate change impacts to Minnesota.

24. I am so concerned that I set up my spiritual lodge to pray near the proposed projects route. Instead of noting my lodge, the Enbridge survey crew placed a stake in the middle of the lodge, without demarcation for protection. I was charged with trespassing at my own lodge.

25. It is very apparent to me that our resources are not being safeguarded by government decision-makers. Worse, it looks like the Corps is not concerned about protecting our tribal rights. The Corps has now granted a permit to Enbridge that will allow it to damage and destroy waterbodies and wetlands that provide essential food and spiritual resources to me and my fellow tribal members. I support this challenge to the

Corps' permit, and I believe that Enbridge needs to be immediately stopped from harming the waters that are so essential for our survival.

26. Miigwech.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 24th day of December 2020, in Ponsford, Minnesota.

A handwritten signature in black ink that reads "Winona LaDuke". The signature is written in a cursive style with a long, sweeping tail on the "e".

Winona LaDuke

Exhibit H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RED LAKE BAND OF CHIPPEWA INDIANS,
WHITE EARTH BAND OF OJIBWE, HONOR
THE EARTH, and SIERRA CLUB,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS,

Defendant.

Case No. 1:20-cv-3817

**DECLARATION OF JAIME ARSENAULT
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Jaime Arsenault, declare and state as follows:

1. I am the Tribal Historic Preservation Officer (“THPO”) for the White Earth Band of Ojibwe (“White Earth Band” or “Band”). In this role, I am the official Tribal representative for historic and cultural resource preservation. I am also the official Tribal representative under multiple federal laws, including the National Historic Preservation Act, American Indian Religious Freedom Act, Archaeological Resource Protection Act, and National Environmental Policy Act (“NEPA”). Among other things, I maintain review authority over federal undertakings under NEPA both on and off Tribal land.

2. For over two decades, I have worked with indigenous communities across the country on issues involving grave protection and repatriation, food sovereignty, community health, and protection of community knowledge. In addition to my position with the White Earth Band, I currently sit on several committees and advisory boards including the Smithsonian

National Museum of Natural History's Repatriation Review Committee. Through this public service, I continue to assist with the respectful return of Ancestors/human remains and other cultural resources, while always striving to protect Indigenous cultural knowledge.

3. Northern Minnesota is very much my home. Like many others, this is the place where I rice, fish, gather medicines, and attend ceremonies.

4. White Earth Band members depend on the natural resources of the White Earth Reservation and surrounding areas. They participate in a variety of culturally significant subsistence activities, including harvesting wild rice and maple syrup, fishing, and gathering edible and medicinal plants. Harvesting wild rice is particularly significant. Wild rice is central to the migration story of the Ojibwe people. This food remains an essential feature of ceremonies practiced throughout Minnesota, and it is considered a sacred food. In addition, wild rice is important to the White Earth Band's food security, economic stability, quality of life, and overall health.

5. I am aware that the U.S. Army Corps of Engineers ("Corps") has issued permits allowing Enbridge Energy, Limited Partnership ("Enbridge") to construct a pipeline that will transport crude oil from the tar sands region in Alberta, Canada through northern Minnesota to Wisconsin. This pipeline will pass within three miles of the White Earth Reservation's boundaries, and it will cross or otherwise affect lands and waters that Band members use and rely upon for hunting, gathering, fishing, and harvesting wild rice, along with other cultural purposes. Many of these lands and waters are within the White Earth Band's historical territory, and the Band's ability to use these lands and waters is protected under various treaties. The White Earth Band opposes this pipeline, and Band members are concerned that the Corps failed to comply with federal law in issuing the necessary permits.

6. I am very concerned that an oil leak or spill from the pipeline will permanently interfere with the White Earth Band's ability to engage in culturally significant subsistence activities on and off the White Earth Reservation. I know that pipeline leaks occur, and Enbridge's pipelines have leaked and spilled in the past with lasting impacts. Wild rice is a very sensitive plant, and slight changes in water quality or sulfate levels could have disastrous effects. Given Enbridge's track record, I am worried that leaks or spills from the pipeline will damage the White Earth Band's ability to harvest this sacred food and access clean water.

7. In addition, I understand that the Corps has authorized Enbridge to destroy 10 acres of wetlands and permanently alter 230 additional acres. This imminent destruction and permanent alteration will damage habitat and interfere with the White Earth Band's culturally important subsistence activities.

8. Construction and operation of the pipeline has already threatened one important cultural site, and I fear that it will threaten others. On December 5, 2020, an Enbridge construction crew discovered a ceremonial lodge in Palisade, Minnesota, on the banks of the Mississippi River. Enbridge failed to notify me about the discovery; instead, I found out about it through social media. Enbridge also failed to send a cultural resource monitor to the site to ensure that it was protected. Leaving a cultural site unprotected risks damage to the site.

9. I visited the site and determined that this lodge is a ceremonial lodge and modeled after other lodges found throughout Minnesota. While these lodges are reconstructed every few years per cultural protocol, the practice of reconstructing lodges is historic. Ceremonial and healing activities take place within such structures, and unmarked burials are often located nearby.

10. During my visit, I saw that the Enbridge crew had placed a stake right in the center of the lodge. This is disrespectful, and it suggests that the crew planned to destroy the lodge without adequate consultation or review.

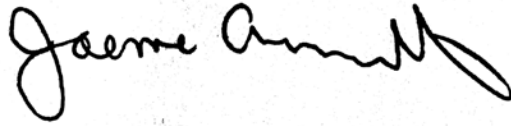
11. It is my assessment that the lodge is a culturally significant area where traditional cultural practices are still occurring. Thus, I have recommended that Enbridge leave the lodge intact, stop clearing trees near it, and conduct an archaeological review of the area using non-destructive review methods. But, despite my assessment and recommendation, it is my understanding that construction near the lodge is ongoing.

12. Destruction of this cultural site is damaging and disrespectful to the White Earth Band and other Native communities here in Minnesota. Any potential destruction of nearby burial areas would cause further irreparable harm.

13. The lodge is located in an area known as Sandy Lake, which is one of the most significant cultural crossroads of the Chippewa people, including White Earth Band members. Sandy Lake is rich in cultural and historical sites that require protection. If construction continues in this area, additional sites will likely be destroyed.

14. If this Court were to enjoin pipeline construction, White Earth Band members could continue to engage in culturally significant subsistence activities without interference. In addition, I would feel more confident that culturally important sites will not be destroyed in reliance on a legally infirm permit.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 24th day of December 2020.

A handwritten signature in black ink, appearing to read "Jaime Arsenault". The signature is written in a cursive style with a large initial "J" and a long, sweeping tail.

Jaime Arsenault

Exhibit I

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnesota Department of Natural
Resources et al.,

Case No. 21-cv-1869 (WMW/LIB)

Plaintiffs,

v.

The White Earth Band of Ojibwe and
Hon. David A. DeGroat, *in his official
capacity as judge of the White Earth Band
of Ojibwe Tribal Court,*

**ORDER DENYING PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION AND DISMISSING
COMPLAINT WITHOUT PREJUDICE**

Defendants.

This matter is before the Court on Plaintiffs’ motion to preliminarily enjoin Defendants from proceeding in the matter *Manoomin v. Minnesota Department of Natural Resources*, Case No. GC21-0428 (White Earth Band of Ojibwe Tribal Ct.). (Dkt. 5.) For the reasons addressed below, the Court denies Plaintiffs’ motion for a preliminary injunction and dismisses Plaintiffs’ complaint without prejudice for lack of subject-matter jurisdiction.

BACKGROUND

Plaintiffs are the Minnesota Department of Natural Resources (DNR) and its officials. Defendants are the White Earth Band of Ojibwe (Band) and Hon. David A. DeGroat, Chief Judge of the White Earth Band of Ojibwe Tribal Court (Tribal Court).

On August 5, 2021, the Band and several other parties¹ (collectively Band Parties) filed suit against the DNR and its officials in the Tribal Court. In the Tribal Court matter, the Band Parties allege that, by granting water-use permits to a company in conjunction with that company's operation of an oil pipeline in northern Minnesota, the DNR violated the Band Parties' rights. In particular, the Band Parties allege that the DNR's conduct violates the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, the American Indian Religious Freedom Act (AIRFA) and treaties between the United States of America and the Chippewa and other tribes, among other claims. In their lawsuit in the Tribal Court, the Band Parties seek declaratory and injunctive relief.

The DNR moved to dismiss the Band Parties' tribal lawsuit, arguing that the Tribal Court lacks subject-matter jurisdiction due to the non-member status of the DNR and its officers, the DNR's sovereign immunity and the fact that the contested actions did not take place on reservation land. Chief Judge DeGroat of the Tribal Court denied the DNR's motion to dismiss, holding that the DNR's arguments regarding sovereign immunity and subject-matter jurisdiction "must give way" to the Band's "vital" interests.

On August 19, 2021, Plaintiffs commenced this action, seeking declaratory and injunctive relief against the Band and Chief Judge DeGroat. Plaintiffs argue that the Tribal Court lacks subject-matter jurisdiction over the dispute currently pending in the Tribal Court. Plaintiffs also contend that sovereign immunity protects them from the Band Parties'

¹ The plaintiffs in the tribal court proceeding are Manoomin (wild rice), the Band, members of the Band's tribal council, and other individuals including members of the Band, members of other tribes and individuals who are not members of any tribe.

lawsuit. Plaintiffs request that this Court preliminarily enjoin the Band and Chief Judge DeGroat from proceeding with the matter currently pending in the Tribal Court.

ANALYSIS

Preliminary injunctive relief is an extraordinary remedy that is never awarded as of right. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The purpose of a preliminary injunction is to maintain the status quo. *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994). The burden rests with the moving party to establish that injunctive relief should be granted. *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003). When determining whether preliminary injunctive relief is warranted, the district court considers four factors: (1) the movant's likelihood of success on the merits, (2) the threat of irreparable harm to the movant, (3) the state of balance between the harm to the movant and the injury that granting an injunction will inflict on other parties to the litigation, and (4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981).

The first and most important *Dataphase* factor is the movant's likelihood of success on the merits. *Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020) (stating that "[t]he likelihood of success on the merits is the most important of the *Dataphase* factors") (internal quotation marks and brackets omitted). A party seeking a preliminary injunction need not demonstrate actual success on the merits, but that party must demonstrate a likelihood of success. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987). When a court concludes that a plaintiff has "failed to establish a substantial likelihood of success on the merits, [the court] will not address the other prerequisites of

preliminary injunctive relief.” *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994).

“Tribal sovereign immunity is a jurisdictional threshold matter.” *Fort Yates Pub. Sch. Dist. No. 4 v. Murphy ex rel. C.M.B.*, 786 F.3d 662, 670 (8th Cir. 2015) (internal quotation marks omitted). “As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). “A tribe’s sovereign immunity may extend to tribal agencies, including the Tribal Court.” *Fort Yates*, 786 F.3d at 670–71 (internal quotation marks and brackets omitted); *accord Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8th Cir. 2000) (observing that it is “undisputed that a tribe’s sovereign immunity may extend to tribal agencies”). “The Supreme Court has made clear . . . that a tribe’s sovereign immunity bars suits against the tribe for injunctive and declaratory relief.” *Fort Yates*, 786 F.3d at 671 (citing *Mich. v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014) and *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)).

Plaintiffs commenced this action against the Band and Chief Judge DeGroat in his official capacity.² These parties, a tribe and a tribal court, however, are both protected

² Although Plaintiffs have not sued the Tribal Court, they have sued Chief Judge DeGroat in his official capacity. Counsel for Plaintiffs asserted at the September 1, 2021 hearing that they sued Chief Judge DeGroat exclusively in his official capacity because the Chief Judge of the Tribal Court is the appropriate defendant for the purposes of an official-capacity suit. As such, Plaintiffs effectively seek declaratory and injunctive relief against the Band and the Tribal Court.

from suit by tribal sovereign immunity.³ *Id.* at 670–71. And Plaintiffs do not allege that Defendants have waived their sovereign immunity or that Congress has authorized this lawsuit. Because both Defendants are immune from suit and Plaintiffs have not identified an applicable waiver or abrogation of tribal sovereign immunity, this Court lacks the authority to enjoin Defendants. Plaintiffs, therefore, have failed to demonstrate a likelihood of success on the merits, and the Court need not analyze the remaining *Dataphase* factors.

In summary, Plaintiffs are not entitled to injunctive relief because this Court lacks the authority to enjoin the Defendants in this case. Moreover, in light of Defendants’ tribal sovereign immunity, the Court also concludes that it lacks subject-matter jurisdiction over this case and must dismiss the complaint without prejudice.⁴ *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs’ motion for a preliminary injunction, (Dkt. 5), is **DENIED**.

³ “Of course, the Tribe’s sovereign immunity does not necessarily protect Tribal officials from suit,” *id.* at 671 n.8, nor does it protect other individuals. But Plaintiffs have not sued any person in his or her individual capacity.

⁴ Because this Court lacks jurisdiction over Defendants based on their sovereign immunity, the Court declines to address whether the Tribal Court has jurisdiction over Plaintiffs pursuant to *Montana v. United States*, 450 U.S. 544 (1981), as such an opinion would be an improper advisory opinion, *see* U.S. Const. art. III, § 2.

2. Plaintiffs' complaint, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 3, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge

Exhibit J

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnesota Department of Natural
Resources et al.,

Case No. 21-cv-1869 (WMW/LIB)

Plaintiffs,

v.

The White Earth Band of Ojibwe and
Hon. David A. DeGroat, *in his official
capacity as judge of the White Earth Band
of Ojibwe Tribal Court,*

**ORDER DENYING PLAINTIFFS’
LETTER REQUEST FOR
PERMISSION TO FILE A MOTION
TO RECONSIDER**

Defendants.

Before the Court is Plaintiffs’ September 5, 2021 letter requesting permission to file a motion to reconsider this Court’s September 3, 2021 Order denying Plaintiffs’ motion for a preliminary injunction and dismissing the complaint for lack of subject-matter jurisdiction. (Dkt. 21.)

Pursuant to Local Rule 7.1(j), a party may receive permission to file a motion for reconsideration only by showing “compelling circumstances.” LR 7.1(j). “Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence.” *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir. 1988) (internal quotation marks omitted). Absent a manifest error of law or fact, a motion for reconsideration cannot be employed to repeat arguments previously made, introduce evidence or arguments that could have been made, or tender new legal theories for the first time. *See id.*

Plaintiffs argue that the Court erroneously concluded that Defendant Hon. David A. DeGroat, Chief Judge of the White Earth Band of Ojibwe Tribal Court (Tribal Court), is protected from suit by sovereign immunity. Plaintiffs argue that Chief Judge DeGroat may be sued under *Ex Parte Young*. The *Ex Parte Young* doctrine “rests on the premise—less delicately called a fiction—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes. The doctrine is limited to that precise situation.” *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011) (internal citations and quotation marks omitted). The doctrine “does not apply when the state is the real, substantial party in interest, as when the judgment sought would expend itself on the public treasury or domain, or interfere with public administration.” *Id.* When determining whether the sovereign is the real party in interest, “courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign.” *Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017). “[T]he general criterion for determining when a suit is in fact against the sovereign is the *effect* of the relief sought.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 107 (1984). “The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter.” *Hawaii v. Gordon*, 373 U.S. 57, 58 (1963). Such a suit is barred “regardless of whether it seeks damages or injunctive relief.” *Pennhurst*, 465 U.S. at 101–02.

Here, Plaintiffs sued Chief Judge DeGroat in his official capacity. But the relief Plaintiffs seek is an injunction preventing the Tribal Court from acting. To be effective,

the injunction Plaintiffs seek necessarily would have to operate against the Tribal Court rather than simply against an individual judge. Otherwise, Chief Judge DeGroat's recusal from the tribal court proceeding would have mooted the injunction Plaintiffs sought. For these reasons, Plaintiffs' suit against Chief Judge DeGroat was one in which the Tribal Court was the real, substantial party in interest.

Plaintiffs have failed to demonstrate that the Court committed any manifest errors of law or fact in concluding that Plaintiffs' suit was, in effect, against the Tribal Court, and thus barred by sovereign immunity. For these reasons, the Court denies Plaintiffs' request for permission to file a motion to reconsider the Court's September 3, 2021 Order.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiffs' request for permission to file a motion to reconsider, (Dkt. 21), is **DENIED**.

Dated: September 10, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge

Exhibit K

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3050

Minnesota Department of Natural Resources, et al.

Appellants

v.

The White Earth Band of Ojibwe and Hon. David A. DeGroat, in his official capacity as judge of
the White Earth Band of Ojibwe Tribal Court

Appellees

Appeal from U.S. District Court for the District of Minnesota
(0:21-cv-01869-WMW)

ORDER

Appellants' motion for injunction pending disposition of its motion for injunctive relief and the motion for injunction pending appeal are denied without prejudice. Appellants' motion for an expedited appeal is granted, and the following briefing schedule is established:

Appellants' Brief and Addendum	October 18, 2021
Appendix (Joint or Appellants' Separate Appendix)	October 18, 2021
Appellees' Brief (and Separate Appendix if Required)	Twenty-one days from the date the Court issues the Notice of Docket Activity Filing Appellants' Brief
Appellants' Reply Brief	Ten days from the date the Court Issues the Notice of Docket Activity Filing Appellees' Brief

The court will submit the case during the January, 2022 session of court.

September 21, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Exhibit L



Jason Risdall tel 218-522-4705
Manager Regulatory Affairs Jason.Risdall@enbridge.com

Enbridge Energy, Limited Partnership
11 E Superior Street
Suite #125
Duluth, MN 55802

September 23, 2021

VIA ELECTRONIC FILING

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of the Enbridge Energy, Limited Partnership for a Route Permit Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border MPUC Docket No. PL9/PPL-15-137

Dear Mr. Seuffert:

Enclosed for filing with the Minnesota Public Utilities Commission please find the weekly public status report for Enbridge Energy, Limited Partnership (Enbridge) Line 3 Replacement Project.

Route Permit Condition 4.9 requires the submission of weekly status reports during Project construction or restoration activities.

If you have any questions about the information in this filing, please feel free to contact me at 218-522-4705.

Sincerely,

Jason Risdall
Manager, Regulatory Affairs
Enbridge Energy, Limited Partnership

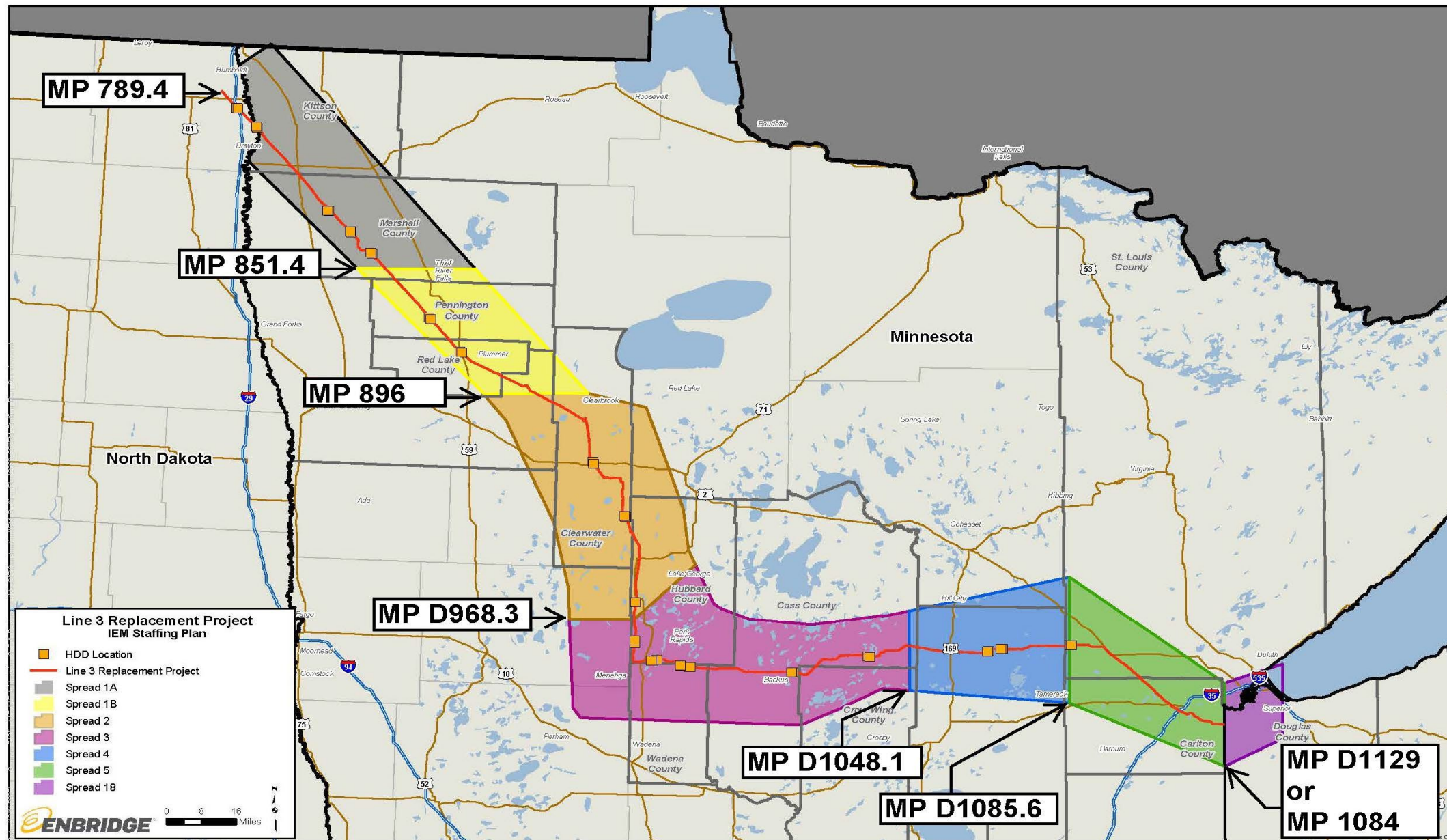
Encl.

Line 3 Replacement Project (PL-9/PPL-15-137)
Route Permit Public Status Report
Line 3 Replacement Project Spread Overview Map

Report #: 46
Report Dates: 09-12-2021 to 09-18-2021

Enbridge shall report to the Minnesota Public Utilities Commission on progress during finalization of the route and construction of the pipeline. Enbridge shall report weekly. If there is any period of time where no construction activity is occurring, restoration of the prior phase of the project has been completed, and the overall project is not yet completed, Enbridge need only provide status reports monthly.

For additional information please go to the Line 3 website: <https://www.enbridge.com/line3us>



Information included in this report is provided pursuant to the Company's obligations under the Route Permit issued by the MPUC. The information included herein is accurate only as of the dates covered by this report and is not necessarily indicative of the Company's expected results or progress that may be reflected in future reports. The Company cautions readers against placing undue reliance on the information provided in this report beyond its intended use, as it is not a guarantee of future performance. Readers are directed to the filings of Enbridge Inc. with Canadian and United States securities regulators for additional information.

Spread 1 - Major Mainline Construction Milestones Since Last Report (MP 789.4 to MP 896)		
	Progress	
	<i>This Week</i>	<i>Total</i>
Clearing	0.0%	100.0%
Top Soil Grading	0.0%	100.0%
Stringing	0.0%	100.0%
Welding	0.0%	100.0%
Coating	0.0%	100.0%
Trenching	0.0%	100.0%
Backfill	0.0%	100.0%
Tie-Ins	0.0%	100.0%
Initial Clean-up	0.1%	100.0%
Final Clean-up	0.1%	100.0%
HDD	0.0%	100.0%
Bore	0.0%	100.0%

Spread 4 - Major Mainline Construction Milestones Since Last Report (MP D1048.1 to MP D1085.6)		
	Progress	
	<i>This Week</i>	<i>Total</i>
Clearing	0.0%	100.0%
Top Soil Grading	0.0%	100.0%
Stringing	0.0%	100.0%
Welding	0.0%	100.0%
Coating	0.0%	100.0%
Trenching	0.0%	100.0%
Backfill	0.0%	100.0%
Tie-Ins	0.0%	100.0%
Initial Clean-up	6.6%	98.0%
Final Clean-up	9.1%	97.4%
HDD	0.0%	100.0%
Bore	0.0%	100.0%

Spread 2 - Major Mainline Construction Milestones Since Last Report (MP 896 to MP D968.3)		
	Progress	
	<i>This Week</i>	<i>Total</i>
Clearing	0.0%	100.0%
Top Soil Grading	0.0%	100.0%
Stringing	0.0%	100.0%
Welding	0.0%	100.0%
Coating	0.0%	100.0%
Trenching	0.0%	100.0%
Backfill	0.0%	100.0%
Tie-Ins	0.0%	99.5%
Initial Clean-up	19.5%	89.2%
Final Clean-up	25.2%	77.0%
HDD	0.0%	100.0%
Bore	0.0%	100.0%

Spread 5 - Major Mainline Construction Milestones Since Last Report (MP D1085.6 to MP D1129/1084)		
	Progress	
	<i>This Week</i>	<i>Total</i>
Clearing	0.0%	100.0%
Top Soil Grading	0.0%	100.0%
Stringing	0.0%	100.0%
Welding	0.0%	100.0%
Coating	0.0%	100.0%
Trenching	0.0%	100.0%
Backfill	0.0%	100.0%
Tie-Ins	0.0%	100.0%
Initial Clean-up	5.5%	59.5%
Final Clean-up	3.2%	53.5%
HDD	0.0%	100.0%
Bore	0.0%	100.0%

Spread 3 - Major Mainline Construction Milestones Since Last Report (MP D968.3 to MP D1048.1)		
	Progress	
	<i>This Week</i>	<i>Total</i>
Clearing	0.0%	100.0%
Top Soil Grading	0.0%	100.0%
Stringing	0.0%	100.0%
Welding	0.0%	100.0%
Coating	0.0%	100.0%
Trenching	0.0%	100.0%
Backfill	0.0%	100.0%
Tie-Ins	0.0%	100.0%
Initial Clean-up	7.6%	98.5%
Final Clean-up	24.1%	98.0%
HDD	0.0%	100.0%
Bore	0.0%	100.0%

Major Facilities Construction Milestones Since Last Report		
	Progress	
	<i>This Week</i>	<i>Total</i>
Donaldson	2.1%	95.2%
Viking	2.5%	96.8%
Plummer	2.4%	97.0%
Clearbrook	0.8%	97.0%
Two Inlets	0.7%	98.8%
Backus	0.7%	97.4%
Swatara	0.3%	98.8%
Gowan North	0.4%	99.0%

Route Permit Public Status Report

Overall Summary Major Environmental Milestones Since Last Report			
	Progress		
	<u>Total</u>	<u>This Week</u>	<u>Total</u>
Number of Waterbody Crossings Complete	223	0.0%	100.0%
Number of Wetland Crossings Complete	841	0.0%	99.8%
Percent of Areas meeting final stabilization (revegetation) criteria		12.4%	85.2%

Construction Updates to Note Since Last Report:

Mainline:
 - Daily protest activity continues
 - Commissioning work continuing

Spread 1 - Major Environmental Milestones Since Last Report (MP 789.4 to MP 896)			
	Progress		
	<u>Total</u>	<u>This Week</u>	<u>Total</u>
Number of Waterbody Crossings Complete	104	0.0%	100.0%
Number of Wetland Crossings Complete	240	0.0%	100.0%
Percent of Areas meeting final stabilization (revegetation) criteria		0.1%	100.0%

Mainline and Facilities:
 - COVID protocols are in place and working as intended

Spread 2 - Major Environmental Milestones Since Last Report (MP 896 to MP D968.3)			
	Progress		
	<u>Total</u>	<u>This Week</u>	<u>Total</u>
Number of Waterbody Crossings Complete	37	0.0%	100.0%
Number of Wetland Crossings Complete	213	0.0%	99.1%
Percent of Areas meeting final stabilization (revegetation) criteria		25.2%	77.0%

Facilities:
 - Commissioning work is substantially complete
 - Energization continues

Spread 3 - Major Environmental Milestones Since Last Report (MP D968.3 to MP D1048.1)			
	Progress		
	<u>Total</u>	<u>This Week</u>	<u>Total</u>
Number of Waterbody Crossings Complete	24	0.0%	100.0%
Number of Wetland Crossings Complete	218	0.0%	100.0%
Percent of Areas meeting final stabilization (revegetation) criteria		24.1%	98.0%

Environmental Updates to Note Since Last Report

- On September 12, 2021, Enbridge reported an event where turbid water entered a waterbody after pipeline installation. Upon identification, corrective measures were implemented, including additional erosion controls. Agency notification occurred for this event.
 - On September 16, the MDNR issued Enbridge a Restoration Order and Administrative Penalty Order. Enbridge continues to work with the MDNR and is implementing the previously approved remedial action plan.

Spread 4 - Major Environmental Milestones Since Last Report (MP D1048.1 to MP D1085.6)			
	Progress		
	<u>Total</u>	<u>This Week</u>	<u>Total</u>
Number of Waterbody Crossings Complete	30	0.0%	100.0%
Number of Wetland Crossings Complete	79	0.0%	100.0%
Percent of Areas meeting final stabilization (revegetation) criteria		9.1%	97.4%

Spread 5 - Major Environmental Milestones Since Last Report (MP D1085.6 to MP D1129/1084)			
	Progress		
	<u>Total</u>	<u>This Week</u>	<u>Total</u>
Number of Waterbody Crossings Complete	28	0.0%	100.0%
Number of Wetland Crossings Complete	91	0.0%	100.0%
Percent of Areas meeting final stabilization (revegetation) criteria		3.2%	53.5%

Spread 1 (MP 789.4 to MP 896)



Photo Caption: Restoration

Spread 4 (MP D1048.1 to MP D1085.6)



Photo Caption: Clean-up/ Pulling Mats

Spread 2 (MP 896 to MP D968.3)



Photo Caption: Backfilling/ Restored Right of Way

Spread 5 (MP D1085.6 to MP D1129/1084)



Photo Caption: Maintaining ECD/ Pulling Mats

Spread 3 (MP D968.3 to MP D1048.1)



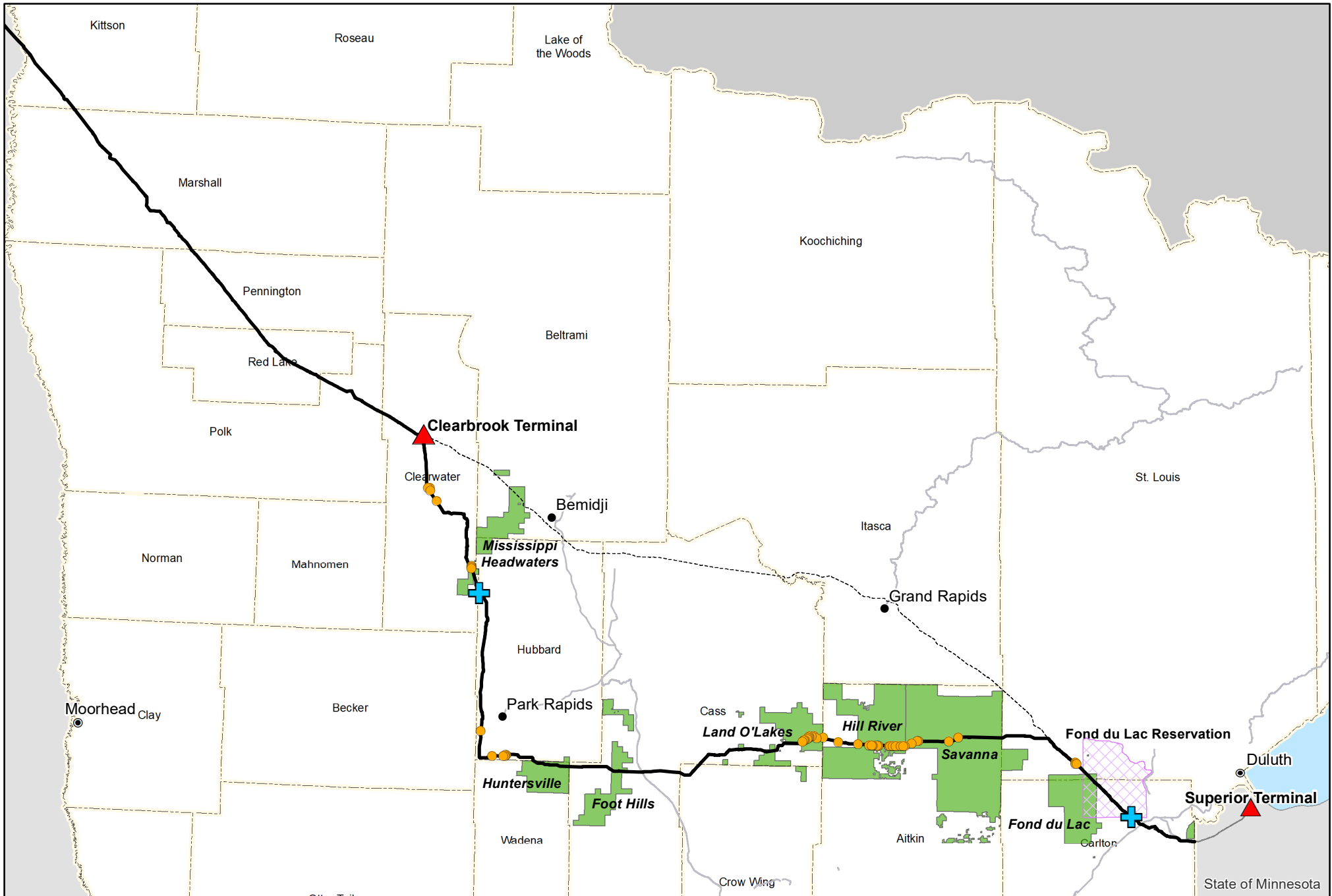
Photo Caption: Finished Valve Pad/ Final Restoration








Facilities



Photo Caption: Installing Fan Duct/ Installing Supports

Exhibit M



-  Line 3 Pipeline
-  Existing Main Line Corridor
-  Minnesota State Trails
-  Fond du Lac Reservation
-  Intersecting Aquatic Management Areas (AMA)
-  Intersecting School Trust Lands
-  Intersecting State Forests

0 12.5 25 50 Miles

mn DEPARTMENT OF NATURAL RESOURCES

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Data was provided by the State of Minnesota and Enbridge Inc.

