

March 10, 2016

(Delivered by Electronic Email Service)

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Re: Request for Change in RGU Designation for Environmental Review of North Dakota Pipeline Company's Proposed Sandpiper Pipeline and Enbridge Energy's Line 3 Pipeline Replacement Projects from the PUC and DOC to MDNR and MPCA.

Dear Chairman Fredrickson,

The Minnesota Appeals Court recently agreed with citizen's and Tribe's long-held contention that a full environmental impact statement (EIS) was needed before any final decisions could be made on the Sandpiper pipeline project. The circumstance that made this lawsuit necessary was the serious miscarriage of the environmental review process on the part of two state agencies currently conducting environmental review for pipelines.

The single most powerful tool for protection of our state's human and natural environment is the Minnesota Environmental Policy Act (MEPA). Under EQB's rules and guidance for performing MEPA reviews government agencies are required to take a hard look at the environmental consequences of their actions and possible alternatives to those actions before taking "any major government action" (116D.04 Subd. 2a.). The procedures require agencies to effectively consult with the public, efficiently collaborate with other agencies (116D.02 Subd 1 Policy) and (116D.03Subd. 2 Duties #2) and Tribes, use credible peer reviewed science in a transparent, objective and rational process to produce a concise "truth-telling" report.

Through adherence to the highest levels of professional principles and standards in performing these duties many government agencies have successfully demonstrated that their work can withstand the most ardent of critics and serve the public's demand for transparent rational decision-making while meeting the needs of project proposers for due process as well. But there is no provision of MEPA or EQB rules that can ensure this professional integrity by agencies when exercising the considerable discretionary latitudes inherent in the process. In unskilled hands or under control of the otherwise motivated practitioners environmental review can be uselessly uninformative or even dangerously misleading to policy-making bodies and to the public.

The process as practiced by state agencies in pipeline cases thus far has lost the public trust, has lead to endless controversy and delay, and has already produced one lawsuit. And in so-doing the responsible agencies have served neither the greater public good nor the project proposer's need for a fair, efficient and consistent government process for permit review.

For example (and as the supporting documentation will demonstrate) the scoping process intended to focus a broad clear bright light on all important issues and alternatives of a project has been shrunk to near "peep-hole" size by a series of prejudicial judgments performed by the current RGU agencies. In spite of a court order to perform a more robust EIS that could expand that "peep-hole" the same agencies are once again imposing prejudicial constraints on the new process. Such unprofessional or unskilled environmental review will only lead to more controversy, delay and lawsuits. And it will further undermine citizen, business and legislator support for the entire institution of environmental review.

In the attachments to this letter, the requested change in RGU is supported using criterion stated in EQB rule. Specifically it can be demonstrated that both the DNR and PCA have greater responsibility and capacity for supervising any environmental protection limitations placed on pipeline projects than either the PUC or the DOC. And both DNR and PCA have demonstrably greater expertise relevant for environmental review and have greater expertise in analyzing the potential impacts of pipeline projects.

But more importantly the attached criteria and evaluation provide detailed information to clearly demonstrate DOC and PUC staff's functional short-comings in past and present environmental review activities for pipelines. In the current process:

- Staff failed to satisfy even the lowest standard for satisfactory public information or involvement and failed to provide public access to unbiased factual information;
- Staff failed to respond to substantive public and peer agency criticisms on scope of study, alternatives considered, data sources used and analytical methods applied;
- Staff abrogated its authority to objectively define the public purpose to be served by this project, a purpose essential to the applicant's qualification for powers of eminent domain;
- Staff instead allowed the applicant to substitute a private rather than public purpose definition for the project that significantly limited alternative pipeline routes to be reviewed;
- Staff arbitrarily and inappropriately segmented the overall project narrowing the scope of the review to just that portion of the pipeline lying within the state thus excluding certain alternative routes and isolating that portion from the remaining portions of the project essential to its function.
- Staff allowed the applicant to use certain provisions of prior contractual commitments to shippers and prior approval of federal tariffs to further eliminate alternative routes from review;
- Staff failed to effectively collaborate with neighboring states and federal agencies to leverage expertise and facilitate consideration of broader system alternatives;
- Staff inappropriately limited the geographic scope of the project to jurisdictional boundaries rather than natural boundaries thus excluding some potential alternative routes from review;

- Staff utilized limited data and highly objectionable methods of analysis to exclude alternative routes from further consideration ignoring public objection and peer agency advice;
- Staffs presently propose to use existing record of decisions developed prior to Court order for the EIS to continue prejudicing or limiting the slate of alternative routes to be considered.

Citizens request relief from this misconduct of environmental review by PUC and DOC staff through the EQB's granting of the requested change in RGU designation to the DNR and PCA.

And, even though the integrity of PCA and DNR are held in higher regard than their sister agencies it is strongly suggested they employ independent panels of qualified peer review experts to perform this work. This extra measure is needed to further insulate the process from undue political influence, preclude even the appearance of bias and to restore the public's confidence. From the public's perspective, state government's ability to prepare high quality environmental review documents is now in need of some serious rehabilitation.

Therefore, on behalf of Minnesota citizen's right to a clean and healthy environment and to defend the functional integrity of the Minnesota Environmental Policy Act (MEPA) as administered under Environmental Quality Board (EQB) rules designed to protect them you are hereby requested to make a change in responsible government unit (RGU) designated for the subject pipeline projects. The request for this change is made under provisions in Minnesota Rules 4410.500 Subpart 5 for General RGU Selection and/or under the RGU exceptions clause in Subpart 6 of that rule.

Sincerely,



Willis Mattison  
42516 State Highway #34  
Osage Minnesota, 56570  
Phone: 218-841-2733

Cc: Will Seuffert, Executive Director, Minnesota Environmental Quality Board  
Dan Wolf, Executive Secretary, Minnesota Public Utilities Commission  
Mike Rothman, Commissioner, Minnesota Department of Commerce  
Bill Grant, Deputy Commissioner, Division of Energy Resources,  
Minnesota Department of Commerce  
John Linc-Stine, Commissioner, Minnesota Pollution Control Agency  
Tom Landwehr, Commissioner, Minnesota Department of Natural Resources

EVALUATION CRITERIA FOR DETERMINING PROPER RGU  
For  
Preparation of Sandpiper/Line 3 EIS  
By  
Willis Mattison, citizen advocate/advisor  
Osage, Minnesota

**I. INTRODUCTION**

Sandpiper and Line 3 are complex inter-state pipeline projects proposed to serve an ever increasingly complex global energy economy within a complex political and environmental arena and a rapidly changing global climate. These pipelines, that would carry more crude oil than the Keystone XL are claimed to be sorely needed but come with enormous and yet to be fully described potential for doing great harm to the human and natural environment. Environmental review of these projects simply must be done properly by highly qualified practitioners to produce the high quality information necessary to guide final decisions.

EQB rules for designating or changing the unit of government responsible for conducting environmental review favor the unit with greater permit and project supervisory authority, the unit that has expertise relevant for the environmental review and/or the unit that has greater expertise in analyzing the potential impacts of the project. Comparisons between the candidate RGU agencies based on these criteria are presented in Attachment B.

But, expertise for conducting environmental review requires more than the ability to comply with minimum procedural requirements of statutes and rules to meet these tests for designation. The process requires adherence to well established standards of transparency, collaboration, and public involvement. And there are long-standing principles for professional applications of science that must be observed. And, above all a process that builds early consensus between the project proposers, the reviewing agencies and the public is a significant measure of expertise in environmental review.

RGU designation rules do not present criteria on which to judge levels of environmental review expertise. Therefore, to support this request it was necessary to present criterion for that purpose. To do that some background information is provided.

There may be greater background detail here than is necessary for state agency administrators or employees but this analysis is also written for a broader public audience that may not be as familiar with the inner government workings of environmental review and permitting.

## II. BACKGROUN FOR EVALUATION OF EXPERTISE

Veteran environmental review practitioners studying the effectiveness of the National Environmental Policy Act (NEPA) for the President's Council on Environmental Quality (CEQ) concluded that the most enduring legacy of the environmental review process is for forming the framework for collaboration between government agencies and the public who will bear the environmental, social, and economic impacts of agency decisions.<sup>1</sup> By extension it is then fair to say that the (NEPA) and the various state environmental policy statutes fashioned after the Federal Act have formed the foundation of and the actual mechanism for modern American environmental protection. These Federal and State laws have established the comprehensive policies and procedures for integrating environmental, economic, and social concerns.

With the passage of these acts, agencies were required to take a hard look at the environmental consequences of their actions and possible alternatives to those actions **before** they made final decisions. They required agencies to effectively consult with the public on what they were proposing to do, accept public views on their proposals, and respond to public views. To ensure this was done comprehensively, both the federal and state acts call for agencies to consult with all other agencies, at all levels of governments including Tribal governments, and provided mechanisms to coordinate overlapping jurisdictional responsibilities.

In Minnesota, as it was on the national level, the concept of environmental review was spawned in the late 1960s with the developing environmental conciseness. The explicit purpose of the Minnesota Environmental Policy Act (MEPA) was to emulate NEPA on the state level in order to implement environmental protection as a matter of public policy and to utilize the Environmental Impact Statement (EIS) as a planning tool in the decision-making process.

Environmental review does not of itself make decisions; rather it provides necessary information to governmental units which they can utilize to make environmentally sensitive decisions in the best interests of the public. It has a further purpose in allowing the public to participate in decisions that affect them. The intent is to prevent environmental degradation by wise and informed decisions.

Based on review of statute and rule, Environmental Quality Board staff in a 2012 evaluation of Minnesota's environmental review program under MEPA<sup>2</sup> developed the following definition of the intent of environmental review that closely mirrors NEPA's intent:

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<sup>1</sup> THE NATIONAL ENVIRONMENTAL POLICY ACT, A Study of Its Effectiveness After Twenty-five Years, Council on Environmental Quality, Executive Office of the President, January 1997

<sup>2</sup> Evaluation and Recommendations for Improving Environmental Review, Approved by EQB November 14, 2012

*‘To understand the environmental effects of proposed projects in order to promote harmony between human activities and the environment, with consideration of both short and long term social and economic needs of the state.’*

EQB staff found that this primary goal of MEPA was best achieved by adherence to similar principals as were found by the CEQ when evaluating NEPA. These principles were:

- *Providing information for decision makers and project proposers*
- *Coordination with federal, state and local agencies*
- *Public involvement in decision making*
- *Efficiency in process*

As it was with NEPA on the national level, implementing MEPA in Minnesota means all departments and agencies of the state government are required to strengthen relationships between state, regional, local and federal-state environmental planning, development and management programs and to utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment. And Tribal governments are to be afforded early and on-going consultations throughout the process not just treated as other citizens or unit of government but rather as the sovereign nations that they are.

In examination of NEPA's 25-year performance the CEQ identified five essential factors or characteristics critical to ensuring effectiveness and success in the environmental review process.

- **Strategic planning** —success depends on the extent to which agencies integrate NEPA's goals for **public involvement** and **interagency collaboration** into their internal planning and permitting processes at an early stage. NEPA study participants found that when environmental review was least effective it was because it was initiated too late in the project development process. However agency managers who have learned how to use environmental review have discovered it helps them do their jobs better and easier. NEPA’s requirements to **consider alternatives** and **involve the public and other agencies with expertise** early in the process can make it easier to discourage poor proposals, reduce the amount of documentation down the road, and support innovation.
- **Public information and input** — Environmental review success depends to a large degree on the **extent to which an agency provides information to and takes into account the views of the surrounding community and other interested members of the public** during its planning and decision-making process; NEPA directs federal agencies to open their doors, bring the public in, and offer genuine opportunities for participation and collaboration in decision-making. NEPA helps managers make better decisions, produce better results, and build trust in surrounding communities.

• **Interagency coordination** — Successful environmental review depends on **how well and how early agencies share information and integrate planning responsibilities with other agencies**. Studies find that agencies sometimes engage in consultation only after critical decisions have — for all practical purposes — been made. In such instances, other agencies and the public at large rightly conclude that concerns have not been heard. As a result, agencies may find the public and other agencies opposing even worthy proposed actions.

• **Interdisciplinary place-based and science-based approach to decision-making** that focuses the knowledge and values from a variety of sources on a specific place. Some agencies seek “litigation-proof” documents, increasing costs and time but not necessarily quality. **In such cases, potential cost savings are also lost because a full range of alternatives has not adequately been examined.** Successful environmental review should not be encyclopedic striving for a robust volume of public record but instead should be properly scoped and peer reviewed in order to be rigorously concise.

From the CEQ’s NEPA evaluation we can summarize the five categories of expertise needed for high quality environmental review:

1. Public Information and Involvement
2. Science and Place-based Analysis
3. Interagency Cooperation and Collaboration
4. Alternatives Identification and Evaluation
5. Building Early Consensus Outcome

### **III. CATEGORICAL CRITERIA FOR EVALUATING EXPERTISE**

In this section, the five categories of high quality environmental review listed above are each explained in greater detail followed by criteria for evaluating expertise in that category.

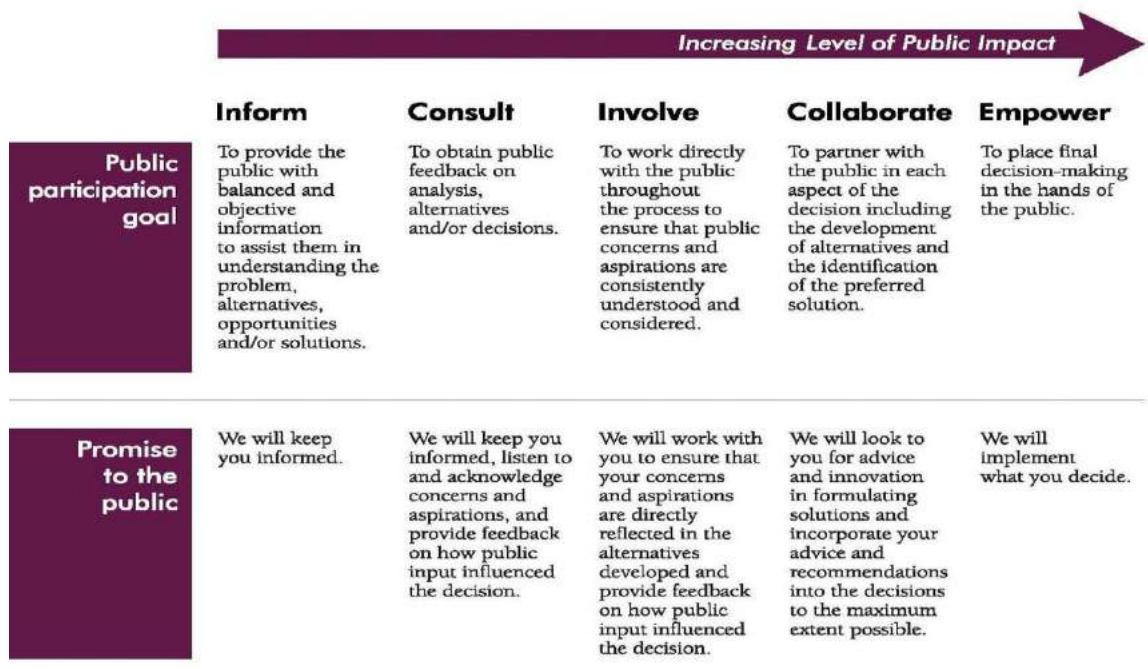
#### **1. PUBLIC INFORMATION AND INVOLVEMENT**

Here we rely on metrics which have been established and used internationally to gauge the effectiveness of various levels public information participation in the kinds of decision-making contemplated in both NEPA and MEPA. The International Association for Public Participation (IAP2)<sup>3</sup> has published criteria that can be used to differentiate minimal citizen involvement from maximum involvement. Those criteria are summarized on the spectrum chart on the next page.

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<sup>3</sup> See website for the International Association for Public Participation at: <http://www.iap2.org/>

# IAP2 Spectrum of Public Participation



Using IAP2 spectrum an agency's expertise for gaining high quality public information and involvement while conducting environmental review can be objectively evaluated.

To summarize the IAP2 chart, the criterion would, in ascending order of quality range from simply to *inform* on the low end through to *consult*, *involve*, *collaborate* and *enable* on the high end

**Public Information and Involvement** (ranked from lowest to highest in quality):

1. Simply **Inform** Citizens
2. **Consult** with Citizens for input on identifying issues
3. **Involve** citizens in making final decisions
4. **Collaborate** with citizens in developing alternatives and building toward consensus before making final decision;
5. **Enable** citizens to identify issues, alternatives and make all decisions.

Since it would be impractical for citizens themselves to actually make final decision in these matters the "enable" level of involvement is unrealistic in this exercise but it does reflect the common practice of having citizen boards as standing committees for government policy-making. In Minnesota, the PUC Board of Commissioners itself, the MPCA Citizen's Board and the Board of Water and Soil Resources are examples of



“enabled” citizen decision-making. Therefore, level #4 “Collaboration” on this ranking reflects the highest practical level of citizen participation in environmental review for purposes of this analysis.

## 2. PEER REVIEWED SCIENCE AND PLACE-BASED ANALYSIS

The use of good scientific methods in successful environmental review is ensured and safeguarded by principles of **peer review**, a concept that is so fundamental to the practice of pure and applied science as to be indispensable to all progress in any scientific endeavor. But the proper functioning of peer review in the MEPA process is often poorly understood and therefore under appreciated by unskilled practitioners, project proposers, policy makers and the general public alike.

Simply put, peer review is the evaluation of work by one or more people of similar competence to the producers of the work (peers). It constitutes a form of self-regulation by qualified members of a profession within the relevant field. Peer review methods are employed to maintain high standards of quality, improve performance, and provide credibility. In academia, scholarly peer review is often used to determine an academic paper's suitability for publication. Peer review can be categorized by the type of activity and by the field or profession in which the activity occurs, e.g., medical peer review or in the current case, environmental peer review.<sup>4</sup>

According to the US Department of Energy Office of Science and Technology<sup>5</sup> the principles and standards for peer review to be valid it must be:

1. Performed by **experts**,
2. **Independent**,
3. **External** (impartial), and
4. **Technical**.

These four requirements can then be used as the primary principle and standards for peer reviewed science in environmental review.

The U.S. Department of Energy’s Office of Science and Technology report goes on to point out the benefits of peer review by stating: “... peer review, if conducted effectively, can enhance both program quality and the credibility of decision making. These include the following:

1. Independent experts who are newly exposed to a project often can recognize technical strengths, weaknesses, and ways to improve the project that may have been overlooked by those close to the project (Bozeman, 1993).
2. Drawing from a large pool of independent, external experts can provide more breadth and depth of expertise to the analysis than that available within the internal reviewer pool, resulting in a more effective and meaningful review.

<sup>4</sup> Definition adapted from Wikipedia

<sup>5</sup> See “Definition of Peer Review” based on the U.S. Department of Energy’s Office of Science and Technology (USOST) at: <http://www.nap.edu/read/5939/chapter/4> .

For example, such experts may be more effective than internal reviewers in evaluating a project in the context of other comparable or alternative technologies available in the private sector, other government agencies, or other countries.

3. Independent experts often can be more open, frank, and challenging to the status quo in their comments than internal reviewers, who may feel constrained by organizational (or political) concerns. *(parenthetical phrase added to apply where government agencies are performing science)*
4. External review can enhance the credibility of the review process by avoiding both the reality and the appearance of conflict of interest.”<sup>6</sup>

NEPA as administered by the U.S. Environmental Protection Agency (EPA) and MEPA procedures as developed and administered by the Minnesota Environmental Quality Board (MEQB) provides several layers of peer review to help ensure high standards of quality and credibility.

In conventional environmental review (as opposed to “alternative review”<sup>7</sup>) peer review is first introduced in the make up of the group of individuals charged the actual drafting of environmental review documents. This group or team may be entirely made up of agency staff or maybe augmented by contractual services of special outside consultants. This largely “internal” method is the weakest and least credible form of peer review.<sup>8</sup> Sometimes, to further ensure greater objectivity in the original drafting an EIS team may assemble a panel of impartial outside experts to either review their work or actually prepare the draft documents.

A more legitimate and robust form of “external” peer review takes place during several rounds the public review of draft scoping and draft EIS documents. Here, outside experts (as well as lay citizens, the applicant, opponents and supporters alike) are all allowed to identify flaws, omissions and errors in the draft document in writing. The criticisms are all officially received during prescribed comment periods and all “substantive” comments must be responded to by either making the corrections or additions warranted or providing defensible arguments as to why the requested changes were not made.

A final round of peer review is added after the “final” EIS is published and before the document can be officially declared adequate. If the final EIS is found to be “inadequate” it must be revised to address the deficiencies identified and once again reviewed for adequacy. For obvious reasons, this final determination of EIS adequacy has increased

<sup>6</sup> From USOST “Benefits of Peer Review at: <http://www.nap.edu/read/5939/chapter/5>.

<sup>7</sup> There is a notable exception to these peer review integrity safeguards in Minnesota’s system of alternative environmental review since peer review is largely absent from that procedure.

<sup>8</sup> “It is important to note that internal reviews, although useful for program management, should not be confused with peer review. The independence of peer reviewers distinguishes them from internal reviewers; and thus, the term “internal peer review” is an oxymoron.” Bozeman, B. 1993. Peer review and evaluation of R&D impacts. Chapter 5 in Evaluating R&D Impacts: Methods and Practice, B. Bozeman and J. Melkers, eds. Boston: Kluwer Publishing as referenced in “Definition of Peer Review” based on the U.S. Department of Energy’s Office of Science and Technology (USOST).

credibility when performed by an independent entity rather than by the RGU that prepared it (see reference in footnote 8 on previous page re: internal peer review).

### **3. Interagency Cooperation and Collaboration**

Interagency cooperation and collaboration adds value and efficiency to environmental review because it brings the collective resources of multiple agencies into the permitting and review process early. Each agency at every level brings valuable perspective, greater access to data, more technical expertise, expanded constituencies and cross-boundary authority to the exercise. Each permitting agency can make sure the project details they need are available in useable form and degree of completeness for their permitting process. Permit procedures and public notices can be coordinated and joint meetings and hearings can be scheduled. Key agency individuals responsible for various aspects of air, water soil, wildlife, fish, forest, wetland management can be made available for team writing of subsections of or appendices to environmental review documents.

Sufficient funding for extra burdens on the several agencies collaborating with the lead agencies is often procured from the project applicant to ensure full participation is possible during the early phases of review. Public information meetings are more successful if technical staffs are present at public meetings to describe the roles and authorities of their respective agencies, to present pertinent information and answer the public's questions.

Review of projects whose component features or impacts cross jurisdictional or political boundaries can be more appropriately and efficiently coordinated. One of the most frequent benefits (and inter-jurisdictional courtesies) of cross-boundary coordination is the assurance that alternatives selected or final decisions made by one entity do not unknowingly restrict or complicate any alternatives that may have been more desirable to a sister agency or neighboring government unit.

**Essential Elements of Interagency collaboration/coordination** (all must be met for highest quality):

1. State Agencies, especially those with permitting authority over the project;
2. Other state agencies with technical expertise in project or resource impact categories;
3. Neighboring state agencies when interstate projects are reviewed or impacts extend beyond state lines;
4. Federal agencies especially when project requires federal permits, federally owned/managed resources are impacted, project impacts several states, and when federal agencies have expertise and data sources useful for review and multi-state jurisdiction;
5. All Tribal governments in project area or zone of impacts;
6. Initiated early and exercised throughout, usually by forming interagency teams.

#### 4. Alternatives Identification and Evaluation

These principles and standards are based on EQB scoping rules and guidance documents.<sup>9</sup> Pipeline projects fit into a category of public projects that require special application of scoping alternatives, alternative selection and exclusion criteria. In these guidelines public project proposers are further cautioned against taking any actions regarding site or route acquisitions or project commitments that could prejudice alternative selection or prematurely eliminate any alternatives prior to completing the EIS.

Both NEPA and MEPA guidance caution against scoping geographic boundaries of alternatives or impacts (especially cumulative impacts) along administrative or jurisdictional lines. Natural boundaries of air sheds, watersheds, river basins, view sheds, regional aquifers ecosystems and landscapes are the appropriate boundaries for scoping project and each alternative's impacts because air, water and visual impacts are not constrained by artificial government boundaries.

See NEPA guidance on using natural boundaries especially when assessing cumulative impacts of a project as an example:

*“Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries. Resources typically are demarcated according to agency responsibility, county lines, grazing allotments or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to insure including all effects.”<sup>10</sup>*

EQB rules state that RGU's must always consider alternative sites when scoping the EIS and evaluate site alternatives in the EIS unless they can be excluded based on one or more of three exclusion criteria.

- a) Underlying need for or purpose of the project is not met;
- b) Significant environmental benefit over the proposed project is not provided; or
- c) Another alternative is likely to be similar in environmental benefits but will have less socioeconomic impact.

The following paragraphs are pertinent quotes from EQB Guidance on selection or exclusion of alternatives:

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<sup>9</sup> May 2010 Guide to Minnesota Environmental Review Rules, Minnesota Environmental Quality Board

<sup>10</sup> Consideration of Cumulative Effects Under NEPA, CEQ 1997

“In applying exclusion criteria, the RGU must not be overly restrictive in defining the project’s purpose and need. Occasionally, an RGU will claim desirable but nonessential elements as part of the project’s purpose or need, thus eliminating alternatives that should be included. In many cases, these are cost-related factors and, while important, they cannot overrule environmental considerations.<sup>11</sup>

“For proposed projects such as highways, streets, **pipelines**, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections must be logical in relation to the design of the total system or network and must not be made merely to divide a large system into exempted segments.

“Public project proposers are further cautioned against taking any actions regarding site or route acquisitions or project commitments prior to completing the EIS unless it is clear that such action is not prohibited by part 4410.3100, subpart 2 or other laws; consult Chapter 2 for further information.

“If RGU’s are too hasty in scoping the EIS, they almost inevitably will face delays later on and may damage their credibility and that of the EIS in the process. Topics and alternatives that need to be in the EIS are generally more extensive than the issues raised by public comments.

“The intent of the requirements about alternatives is to ensure that the RGU takes a serious look at whether significant environmental impacts can be avoided or minimized by carrying out the project in another way.

“The RGU should keep a written record of alternatives examined and its rationale for any alternatives excluded, providing a summary in the EIS scoping document and complete documentation in the EIS.” (End of EQB Guidance quotes).

Discussion: It is important to note that EQB rules for exclusion of alternatives do not make special allowance for the “burden of proof” requirements for alternative pipeline routes proposed by parties other than the applicant to be used to prematurely screen alternatives for purposes of environmental review. However significant differences exist that can be troublesome. The PUC has recognized the extraordinary burden these criterion present and expressed intent to review these rules for fairness and consistency with MEPA.

Principles and Standards for selection or elimination of alternatives: (all must be met for highest quality):

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<sup>11</sup> It is important to note here that it is the RGU that has the authority and responsibility to “define the purpose and need” for the project not the project developer. EQB guidance warns RGU’s that project sponsors often abuse this purpose definition in attempts to environmentally superior alternatives that may cost more than the preferred alternative.

- a. Addressing and resolving “burden of proof” limitations for identification of alternatives routes by parties other than applicant.<sup>12</sup>
- b. A well defined statement of project purpose (developed by the RUG rather than project proposer) is used to screen project alternatives that is not overly restrictive thus eliminating alternatives;
- c. Alternative exclusion criterion in EQB rules are observed;
- d. Segment of larger project for review must be logical in relation to the design of the total system or network and must not be made merely to divide a large system into exempted segments.
- e. Written statement is prepared why any alternatives were excluded from further consideration;
- f. Geographic scope based on potential project impacts on natural rather than jurisdictional or administrative boundaries;
- g. Broad agreement among peer groups on data sets and methodologies used to analyze potential impacts;
- h. Avoid segmenting larger projects into smaller subparts that may eliminates alternatives or narrow geographic scope of impacts assessed;
- i. Economic considerations are not the sole reason for eliminating an alternative;
- j. Prior land acquisition or contractual obligations not used to prejudice selection of alternatives, especially in public projects.<sup>13</sup>

## **5. CONSENSUS OUTCOMES**

Ultimately to be useable for all interested parties the final environmental review document needs to be both comprehensive in scope, concise in findings and comprehensible in length, language and logic. This is essential because the document will be used by technical experts for the permitting process, policy makers for final decisions, by project proposers to understand they were treated fairly and to convince the public that their questions were answered and their needs were met.

When agencies embrace both the spirit and intent of environmental review they have found their jobs much easier because, as with successful strategic planning, it is designed to build early consensus between the project proposers, the reviewing agencies and the public. It produces concise and comprehensible documents appropriately scoped and based on sound interdisciplinary science. When presenting a fair accounting and analysis of alternatives environmental review documents can be relied upon to make good decisions unlikely to be controversial or legally contested.

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<sup>12</sup> See Minnesota Rule 7852.1400 ROUTE PROPOSAL ACCEPTANCE Subp. 3 “*Requirements for Other Route Sources*” These rules for qualifying alternative routes proposed by parties other than the applicant are far more restrictive than MEPA or EQB rules

<sup>13</sup> Crude oil pipelines qualifying for government powers of eminent domain must be considered “public sponsored” projects. Powers of eminent domain grant project proposers much wider flexibility of choice and access to land they do not own. This government power opens a far greater range of alternative routes for pipelines that other private projects have without these powers.

The major weakness most often identified in implementing NEPA (and by inference in MEPA) identified by the CEQ study were not based so much in weaknesses in the legislation so much as they were rooted in the actual execution of environmental reviews performed under these laws. Since these laws are more broad policy than detailed prescription there is much latitude for discretionary choices by the individual practitioners. As stated above, agencies that demonstrated buy-in to the principles of interagency collaboration, transparent fact-based decision-making and that fully embraced public input were most successful. On the other hand, agencies that resisted workings collaboratively with other government agencies were unskilled in the applied natural or social sciences and exhibited distaste or even hostility toward public involvement were much less successful. As the CEQ study warned, environmental review performed by unskilled agencies may result in the public and other agencies opposing even worthy proposed actions or projects.

To summarize some key characteristics indicating that broad consensus outcomes were not achieved in the execution of the environmental review process as identified by the CEQ studies were:

1. Review was initiated too late after major project decisions had already be made;
2. Lengthy unfocused documents that did not aid in good decision-making,
3. Lack of collaboration that caused loss of support from sister agencies and the public,
4. Greater public controversy when citizens were convinced they were not being heard often leading to a more protracted process,
5. Extensive, time consuming revisions to draft documents;
6. Citizen or applicant lawsuits, and
7. Complaints that process takes too much time.

And to this list we might add a seventh indicator; growing discontent by law-makers who react to lengthy review by suggesting measures to short-circuit the NEPA or MEPA process.

This concludes the supporting rationale for the methods proposed for appraising the expertise of potential RGU's for pipeline projects. The results from application of these methods to the recent performance of the PUC and DOC staff are presented in Attachment B - Evaluation Findings.





## ATTACHMENT B

### EVALUATION OF EXPERTISE FOR ENVIRONMENTAL REVIEW

For

**Minnesota Public Utilities Commission Staff**

&

**Minnesota Department of Commerce Staff**

By

Willis Mattison

#### I. INTRODUCTION

The subjective critique presented here and the more objective analysis in the section below is submitted in support of a citizen's request to the EQB for change in RGU for the Sandpiper pipeline. The intention for making this request for change in RGU was originally announced at the December 16<sup>th</sup> 2015 EQB board meeting in the form of an oral and Power Point presentation by the author. The content of that presentation is intended to be incorporated by reference into this more detailed analysis.

These combined documents (and the presentation) are intended to support citizen's contention that the environmental review process administered by the Minnesota Public Utilities Commission (PUC) staff and the Minnesota Department of Commerce (DOC) is inconsistent with established principles and standards of professional and scientific performance for such reviews and are inconsistent with relevant state policy and rules.<sup>1</sup> The argument and analysis provided here is not just that the Department of Natural Resources and Pollution Control Agency have the greater expertise for this RGU assignment; the analysis will demonstrate that the PUC staff and DOC are actually ill-suited and unskilled for practicing the elements and do not adhere to the rigorous professional principles and standards required for high quality environmental review.

Criteria in EQB Rules for RGU selection give preference to the government unit that has greatest responsibility for supervising or approving the project OR to the unit that has the greater relevant expertise for the environmental review. And in exceptional situations the EQB can reassign an RGU to a project when it can be shown that another government unit "has greater expertise in analyzing the potential impacts of the project." This analysis will show that the current circumstances justify the requested change in RGU under each of these criteria in rule.

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<sup>1</sup> We make a clear distinction here between the PUC's staff and the citizens that sit on the Commission itself. It is our contention that the Commissioners have not been well served by either their own or the DOC staff. The PUC, as a quasi-judicial and policy-making body is inhibited in its ability to make good decisions by the quality of environmental review information presented to the Commission by the staff of these two departments.

## **II. A SUBJECTIVE COMPARISON OF RGU'S**

While the PUC may have greater responsibility for “approving” the projects then either the MDNR or the MPCA they have little or no responsibility or capacity for “supervising” them. And the Department of Commerce has neither approval nor supervisory responsibility for pipeline projects. The PUC and possibly the DOC certainly have the greater expertise and experience for assessing the energy related aspects of pipeline projects but they simply do not have the experience or expertise in the natural resource or surface and groundwater pollution impact issues associated with pipelines necessary for environmental review. The PUC and DOC certainly have prepared greater numbers of Comparative Environmental Analyses (CEA’s), but it is clear that CEA’s are a significantly less rigorous form of environmental review than an EIS. Furthermore, the quantity of CEA experience is not a measure of quality nor should it imply expertise in preparing the more rigorous environmental impact statements (EIS’s).

There are significant differences between the CEA’s that were used for all past pipeline projects and the court-ordered EIS for Sandpiper.<sup>2</sup> These differences stand to have deleterious consequences for the efficacy of the EIS if the poorly executed CEA process utilized thus far forms the pretext for the EIS. While advocates may argue that the CEA procedure was designed to be MEPA compliant and even equivalent to an EIS a closer examination will show that this alternative review procedure has not performed as well as was anticipated and has produced sub-standard results.<sup>3</sup>

The PUC staff and DOC may have prepared some environmental reviews that they believe are EIS equivalents for electrical power line projects. Power lines are also linear energy transportation projects but the similarities to pipelines pretty much ends there. The potential for human and natural resource impacts from crude oil pipelines, especially from leaks and spills as well as end-of-project-life issues are significantly different in type, scope, scale and duration. For example, a cursory review of CEA’s prepared for previous pipeline projects in the past suggest that only construction related impacts were examined. The major operational risks of crude pipelines including frac-outs during construction, impacts from leaks and oil spills and end-of-life pipeline abandonment were not identified as issues and thus not evaluated. Risks assessments were not prepared and worst case scenarios for spills along alternative route options were not a part of these reviews. Impacts from potential leaks and spills from pipelines were only recently added to the scope of review for the Sandpiper pipeline and that was only at the adamant insistence of outside parties, not at the initiative of the DOC or PUC staff.

Neither the PUC nor DOC staff have been accessible to citizens in outstate regions potentially impacted by the proposed pipeline projects. While the PUC has appointed a “citizen advisor” this person is located in the St. Paul offices and has been accessible outstate only at public meetings and hearings where they have performed largely clerical or hosting functions rather than sources of information and facilitating input.

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<sup>2</sup> See enclosed “*CEA vs. EIS – A Comparison*” – prepared for EQB by Willis Mattison 10/7/15

<sup>3</sup> While this analysis not prepared for that purpose it could in fact, serve equally well as an objective tool for assessing the performance of CEA’s in achieving the goals of environmental review in the EQB’s current rule-making process.

By contrast, both the MPCA and MDNR have large numbers of technical and public information personnel stationed at dozens of outstate locations. These outstate staffs are purposely placed to be accessible by, are regularly engaged with citizens as well as being strategically situated in close proximity to the resources they protect or manage. In addition to oversight of permits issued for various activities regulated by these agencies the staffs are intimately involved with local units of government in watershed planning, local water planning, shoreland planning and zoning programs, and they work closely with Watershed Districts, Soil and Water Conservation Districts, lake associations and Coalitions of Lake Associations (COLA's). MPCA staffs have responsibility for leaks and spills of all kinds of pollutants and have extensive experience with petroleum releases from both surface and underground storage facilities and they have oversight and enforcement responsibility for pipeline spill responses and cleanup. For example the MPCA has been intimately involved in the multi-decade groundwater contamination study of the Enbridge (then Lakehead) pipeline rupture site near Pinewood that occurred in 1979 and major Enbridge pipeline spills in Cohasset, Grand Rapids and hundreds more. They are far more experienced and well positioned to better understand and predict the long term fate and transport of crude oil contaminants in both surface and groundwater.

The fact is that while no Minnesota state agency has experience preparing a full EIS on crude oil pipeline projects the case can be made that for large scale projects that have potential for broad landscape level impacts with major surface and groundwater implications the MDNR and MPCA have far greater expertise and experience.

MDNR staffs are much better able to describe, from research, training and experience, the predictable consequences of habitat fragmentation by linear transportation infrastructure such as highways and pipelines. They have the expertise to assess past and future impacts of pipeline construction, impact of crude oil leaks and spills on fish, wildlife, forest, wetland and wild rice lake resources. They are better informed and capable to describe both the short and long term impacts of these projects on the overall landscape at the ecosystem level.

The evidence in the record already developed for these pipelines show that the Minnesota Pollution Control Agency and Department of Natural Resources each have consistently exhibited superior environmental review acumen and superior expertise for identify pertinent data and for both developing and applying methods for the analysis of the data.<sup>4</sup> Both the MPCA and the MDNR have repeatedly pointed out serious shortcomings and flaws in the DOC's application of MEPA, misjudgments in their selection of data and errors in the methodologies used for analysis of these data on pipeline projects. A number of MPCA and MDNR comments will be referenced in this analysis to demonstrate clear differences from PUC and DOC in their fundamental understanding for the overall execution of environmental review for pipelines. The analysis will also point out the respective superior capacities of these two agencies for supervising pipeline projects as required for RGU assignment.

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<sup>4</sup> See collection of MPCA and MDNR comment letters enclosed.

The MPCA and MDNR have carried out numerous collaborative, multi-agency and multi-state environmental reviews many of which were joint state-federal EIS's. Such projects include reviews of the Polymet Mine, a generic forestry EIS, flood control impoundments in the Red River Basin and Mississippi navigation channel maintenance to name a few. We are not aware of any multi-agency, multi-state or state-federal environmental review experience by either PUC or DOC staffs.

The MPCA, in keeping with Governor Dayton's Executive Order 15-02 and provisions of the agency's Environmental Justice Framework<sup>5</sup> has embarked on a special program to help ensure coordination and collaboration with a diverse range of Minnesota residents including those from lower income communities, communities of color and American Indians. This declaration of policy positions the agency favorably for dealing with Indian Tribe's concerns during environmental review of pipeline projects. It is not clear whether the PUC or the DOC have prepared any similar policy documents.

### **III. OBJECTIVE EVALUATION OF EXPERTISE THROUGH APPLICATION OF PERFORMANCE EVALUATION CRITERIA**

The analysis that follows attempts to demonstrate in more objective terms how the combined actions of the PUC and DOC staffs have failed to meet either the spirit or the intent of the Minnesota Environmental Policy Act (MEPA) in addressing the important pipeline issues. This section of the request will present selected snapshots of citizen's experience with the PUC/DOC's execution of the environmental review process coupled with an outcome expressed as "result" as perceived by the public. Then the evaluation compares that outcome to the sets of criteria developed for each of the five evaluation of expertise categories in Attachment A "Evaluation Criteria for Determining Proper RGU".<sup>6</sup>

#### A. Observations in Public Information and Involvement Category

1. PUC/DOC assumed neutral (non-advocacy) posture at public meetings choosing to present only procedural information and answer general questions. **-Result: Raised questions who would serve role of advocate for citizens and the public interests?**
2. DOC deferred to project proposer to present both facts and merits of project; questions – **Result: Most information presented at public meetings was generally not considered objective by project skeptics;**

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<sup>5</sup> MPCA's Environmental Justice Plan at: <http://www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html>

<sup>6</sup> A number of observations will appear in several categories because the actions evaluated bridged across the artificial boundaries established between them.

3. Independent experts from resource agencies or other sources were not available at public meetings to respond to citizen's questions or fact check project proposer's representations – **Result: Missed opportunity to educate citizens who were skeptical of information they were getting.**
4. Public meeting and hearing venues used by applicant using multi-media and poster board displays manned by project advocates and presenting project aspects in favorable light generally maximizing benefits and minimizing risks. –**Result: Citizens seeking balanced information were increasingly disappointed with DOC public meetings/hearings. Public meetings devolved into “public relations” tools for the applicant**
5. DOC did not respond to citizen's requests that more balanced, objective project information be presented at public meetings. **Result: Growing skepticism for DOC neutrality.**
6. Citizen's attempts to provide some balanced information at public meetings w/ media similar to project proponents were disallowed by DOC; **Result: Citizen's concerns for bias in process grew begin to surface.**
7. News media carried story of Enbridge's investor announcement of company's plans to replace their Line3 in same corridor as Sandpiper. Neither DOC nor NDPC had divulged these plans in Sandpiper hearings. **Results: Loss of public trust for integrity of applicant and DOC that withheld this information. Citizens felt they had to force company and DOC to admit they had plans for more than one pipeline in proposed new pipeline corridor. Undisclosed potential for cumulative impact concerns.**
8. Public only allowed to submit minor route “deviations” for pipelines rather than entirely different sites for consideration in CEA. All other significantly different routes suggested were summarily dubbed “system alternatives” and rejected by DOC staff as not meeting defined project purpose. **Result: Public frustration and suspicions growing that deck was stacked in favor of applicant's preferred route by DOC's narrow definition of project purpose.**
9. Public was not involved nor informed in advance of prior scoping decisions such as defining the project purpose in terms that severely limited range of alternative routes deemed acceptable; **Result: Citizens could not understand why significance of project's purpose statement was never publically disclosed or debated to build consensus.**
10. Citizens were not advised until eleventh hour of prior scoping decision by DOC that all route alternatives proposed had to pass through three pre-determined geographic points to meet project purpose. **Result: Options for submitting alternative routes severely limited. Citizens had to make last minute revisions consequently producing some wildly circuitous route proposals. Process lost credibility.**
11. PUC/DOC advised public that proposed route alternatives must meet technical burden of proof criteria in Rule 7853.0130 . **Results: Citizen's conclude that only another pipeline company could have met the supporting data requirements of these rules and that no citizen nominated routes would be considered. Citizens became convinced the deck had been stacked by DOC and that MEPA was being ignored.**

12. PUC Commissioners realize extraordinary burden of proof criteria in rules are unfair and open separate docket to begin review of rule. **Result: This review has not yet begun and will not have relieved this burden in time to benefit current public process. Conclusions based on this rule continue to restrict alternatives being carried forward into the EIS.**
13. ALJ imposes even more rigorous test for viable alternatives advising public that they must demonstrate capability to actually construct pipeline on proposed route in same timeframe as proposed by applicant. **Result: Complete public exasperation and belief that process is fatally flawed, citizens conclude they have no legitimate role in process. EIS may be based on improper prior scoping decisions.**
14. NDPC began to secure pipeline right-of-way easements and store pipe along preferred route before public meetings were held. **Results: This activity made applicant's preferred route appear to be foregone conclusion for permitting and that no alternative routes would be seriously considered in environmental review whether by CEA or EIS.**
15. Public comments suggested a number of data sets and analytical methods that might be utilized to describe pipeline impacts in CEA but all are summarily rejected by DOC. **Results: Citizens began to believe that DOC's solicitation of data and methodologies for analysis at public meetings were disingenuous.**
16. Citizen groups hire professional scientists and recruit volunteer environmental review professionals to critique CEA methods but criticisms are ignored. **Results: Citizens began to believe that DOC was intractable and unresponsive to peer review, even from external, disinterested experts.**
17. Out of frustration for narrowly scoped CEA and rejection of route alternatives citizens begin calling for full EIS rather than CEA. DOC counters requests for CEA with assertion that CEA is equivalent to EIS. **Citizens began to believe DOC either did not understand the purpose and functions of environmental review or had become prejudiced in favor of applicant's project as proposed.**
18. Citizen groups convinced that public meetings and hearings are not effective means of input and hire attorneys to represent them in contested case evidentiary hearings at enormous expense; **DOC began to treat citizens as opponents or even adversaries. Costs of citizen voices being heard effectively becomes prohibitive.**
19. Citizens appeal staff rejection of system alternatives to full PUC Commissioners. **Results: PUC Commissioners seem to understand issues and grants special high level review and round of public hearings on system alternatives;**
20. DOC produces highly controversial report on system alternatives that is promptly discredited by independent and agency reviewers. DOC defies critics and defends report **Result: Report is not available in timely fashion before hearings and its content is at least useless to citizens and at worst is misleading. Loss of public trust for DOC's scientific integrity, confirms belief that DOC is not responsive to public or capable of producing objective science-based review.**
21. Subsequent round of public hearings did not feature information about or invite comment on system alternatives as PUC ordered but instead simply requested prospective witnesses to testify for or against preferred route. **Result:-Public**

- witnessed DOC and ALJ apparently defy (with impunity) the PUC Commissioner’s order to hold hearings on system alternatives further confounding citizens.**
22. Public realizes that all information whether factual, false or mere opinion coming from supporters and opposition alike would be serially challenged by all parties in contested case hearings, then compiled into a mountainous of transcript of conflicting testimony called the public record from which a law judge is asked to produce “findings and recommendations”. PUC staff defends this “public record” as satisfying environmental review requirements in CON.<sup>7</sup> **Result: Citizen and professional reviewers alike are bewildered with process so dissimilar to the environmental review process they had become accustomed to for other projects.**
  23. Citizens file lawsuit out of sheer frustration and loss of faith with PUC/DOC environmental review process. **Results: Appeals Court orders and Supreme Court affirms need for EIS.**
  24. Even after Appeals Court ruling PUC/DOC resume attempts to limit scope of EIS based on flawed “high level” environmental review report in CON and CEA routing record and previous narrow scoping decisions including narrow project purpose definition. **Result: Citizens lose faith and confidence in DOC and PUC staff for conducting fair review in EIS and some begin to plan appeal to EQB for change in RGU.**
  25. When challenged on decision to continue narrow scope of alternatives DOC appeals to the PUC Commissioners, a policy body rather than using technical experts to affirm narrowing of system alternatives. **Result – Citizens witness further demonstration of DOC’s lack of understanding of MPEA and agency’s inability to properly administer environmental review process.**

Applying the criteria for expertise developed for this analysis to this sampling of citizen’s experience it is fair to conclude that the PUC/DOC staff’s record falls somewhere below the lowest ranking in the rating scale to merely “inform” the public. The agencies failed to effectively consult, involve or collaborate with interested citizens. The also failed to fully inform citizens of prior scoping decisions and the reasons for them. DOC also was reluctant to provide citizens access to certain GIS data they needed to being performing their own reviews of possible alternative routes. Again the criteria for expertise in this category were:

**Citizen Information/Involvement** (ranked from lowest to highest in quality):

1. Simply **Inform** Citizens
2. **Consult** with Citizens for input on identifying issues
3. **Involve** citizens in making final decisions
4. **Collaborate** with citizens in developing alternatives and building toward consensus before making final decision;

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<sup>7</sup> See enclosed May 12, 2014 email from PUC’s Scott Ek to Willis Mattison

## B. Observations on Peer Reviewed Science and Place-based Analysis

1. DOC relies heavily on applicant's Environmental Report for scope, data, methods of analysis and selection of alternatives for CEA and CON impact analysis.  
**Results: Citizens and reviewing agencies point out flaws and deficiencies in applicant's report suggesting better science was likely to show existence of better alternative routes.**
2. PCA develops sophisticated science-based methodology for comparing spill response feasibility based on accessibility, applies method to routes and comes to conclusion that preferred route may rank worst of all evaluated. **Results: DOC rejects PCA's method, analysis and conclusion. DOC loses scientific peer review credibility with citizens because DOC insists on relying on their own "clerical" method analysis instead.**
3. MDNR submits suggested science-based methodology for assessing and comparing broad landscape level impacts along system alternative routes through less sensitive areas of three-state impact zones and suggests there may be lower impact regions of state for pipelines. **Results: DOC largely ignores or rejects MDNR's science and place-based methodology for exploring alternative regions of the state for possible alternative routes.**
4. DOC/PUC utilizes internal and hired consultants for peer review rather than more objective, external and independent review by sister agencies or comments from the public for CEA's. No public comment period is allowed outside of contested case hearings. **Results: Citizens, agencies and professional reviewers understand such internal review is not peer review. CEA lacks scientific credibility**
5. Contested case hearing exhibits wide range of conflicting expert testimony from supporting and opposing parties, again a great expense to citizens. **Results:- Professional reviews and citizens recognize that contested case hearing process is inappropriate for legitimate peer review of science since all "parties" are partisan and ALJ is not expert in science.**
6. MPCA and MDNR apparently invited to consult with DOC staff on CEA but major disagreements are apparent from comment letters in record; **Results: DOC appears to exercise arbitrary control over environmental review process. Peer review does not appear to be valued or desired by DOC.**
7. MPCA and MDNR suggestions that larger landscape level analysis of alternative energy corridors before project specific alternatives are identified for analysis in CEA but DOC steadfastly proclaims other routes unable to fulfill project purpose. **Results: Evidence that peer review is not functioning and scope of alternatives arbitrarily limited w/o support of peer agencies.**
8. Well credentialed environmental science consultant for citizen groups is highly critical of methods used and conclusions reached in applicant's report and DOC's "high level ER". **Results: DOC's scientific credibility and objectivity called into question as more criticisms from qualified outside scientific experts are ignored.**
9. High level environmental review document on system alternatives employs clerical rather than science-based process to simply inventory and compare lists of arbitrarily selected resources within narrow corridors along system alternative



- routes to base conclusion of no environmental benefits over applicant's preferred route. **Results: DOC appears immune to peer review and begins to appear more and more biased toward applicant's preferred project.**
10. Data, methods and conclusions drawn from "high level review" strongly criticized by public, DNR & PCA in public and evidentiary hearings but no requests for revisions are accepted by DOC; **Results: DOC again appears immune to peer review and biased toward applicant's preferred project.**
  11. ALJ ultimately adopts findings of DOC analysis and recommends rejection of all system alternatives with PUC and DOC staff support. **Results: Further evidence that PUC and DOC staffs are not receptive to and are unskilled at peer review intended to improve analysis.**
  12. PUC relies on DOC and ALJ findings to reject all but one slightly modified version of applicant's preferred route for further review in CEA and issues CON. **Results: Record provides evidence that flawed science delivered to policy-makers on PUC citizen's board more and more likely be used to make major decisions.**
  13. Citizens file lawsuit; Appeals Court (and Supreme Court) order EIS based on citizen suit. **Results: Environmental review for pipelines provides DOC with opportunity for a "do-over" of environmental review utilizing peer reviewed science and reconsideration of alternatives previously excluded.**
  14. PUC and DOC intercede by recommending non-peer reviewed routing and CON record be used once again to screen out system alternatives be included in the EIS. **Results: PUC and DOC staffs demonstrate that they will actively interfere with process that would otherwise ensure the use of peer reviewed science.**

Recalling here the principles and standards for peer reviewed science developed for this analysis were:

1. Must be performed by **experts**,
2. Must be **independent**,
3. Must be **external** (impartial), and
4. Must be **technical**.

This analysis supports the conclusion that the PUC and DOC staffs are either unfamiliar with are unskilled at or are unable to employ the principles and standards for peer reviewed science to their efforts for environmental review of pipelines. They have a consistent record of being offered highly qualified peer review from a numbers of credible sources including the MPCA and MDNR staff but DOC systematically rejects almost all such offers.

#### C. Observations on Interagency Cooperation and Collaboration

1. DOC did hold early coordination meetings in 2013 or 2014 with MDNR, MPCA and U.S. Army Corps of Engineers (COE) St. Paul Dist. **Result: MDNR and USACOE issue letters of guidance and requesting more information than was provided in application and applicants Environmental report.**

2. No known DOC communications, meetings or coordination with either states of North Dakota or Wisconsin or with Omaha District COE. **Results: N.D. issues state permits for preferred route. Omaha Dist COE and USFWS begin independent NEPA review for N.D. segment of project in 2015, Wisconsin begins environmental review for that State's segment issuing draft EIS in Feb, 2016. Wisconsin environmental review apparently not coordinated w/ Minnesota.**
3. In 2014 COE St. Paul Dist suspends NEPA and permit review at applicant's request pending completion of Minnesota's review process. **Result: Federal NEPA review not able to proceed in coordination w/ either Corp's Omaha Dist or the States of Wisconsin or Minnesota. Applicant allowed to decouple collaborative state/federal environmental review by manipulating the process w/ DOC/PUC staff complicity.**
4. **(Place holder for information on collaboration w/ DOC in Wisc. Draft EIS. Review in progress and supplemental information to be added when available.)**
5. As of Feb. 2016 (two years) Applicant still has not submitted information requested by USCOE or withdrawn request to suspend Federal reviews. **Result: State and Federal environmental review not able to proceed on coordinated timeframe losing opportunity for shared resources and efficiencies of government service.**
6. When challenged regarding lack of coordination with COE permit and NEPA review DOC takes position that there is no need for such coordination. **Results: DOC demonstrates that it has no interest in and feels no obligation to coordinate or collaborate on environmental review at the interstate or federal levels. Possible loss of expertise, data and additional routing options. Further demonstrates lack of expertise and commitment to MEPA process.**
7. DOC requests environmental review funding from applicant sufficient for PUC and DOC staff time commitment and that of consultant to assist them. However, no funds are requested to facilitate full partnership with MDNR and MPCA staff. **Result: PUC Commissioners are critical of state agencies for commenting but not contributing to review. MDNR points out that their department did not get funding needed to participate fully.**
8. The several Indian Tribes interested and possibly affected by the pipeline were not and have not been sufficiently sought out by PUC or DOC for coordination or consultation. **Result: Significant damage to intergovernmental relationships that have spilled over into other venues including the recent Governor's Water Summit.**
9. Both PUC and DOC staff resist request to effectively meet and confer with several Tribes and Tribal organizations that requested early and regular intergovernmental consultations on project. **Result: Tribal government and Tribal organizations lodge numerous complaints in record. White Earth Tribe files motion for RGU change supported by Tribal organizations. Demonstrates PUC/DOC lack of skill and expertise.**
10. DOC's Memorandum of Understanding for MPCA and MDNR contribution to EIS fails to address collaboration and peer review issues once again relegating

sister agencies to contributor but subordinate “commenter” role rather than co-lead authors of EIS. **Public disillusioned with DOC’s seeming intransigence at maintaining rather than sharing control of EIS scoping and content. Parties filing objections. Demonstration of lack of expertise.**

Again these were the criteria developed for gauging RGU expertise at interagency cooperation and collaboration:

1. State Agencies, especially those with permitting authority over project;
2. Other state agencies with technical expertise in project or resource impact categories;
3. Neighboring state agencies when interstate projects are reviewed or impacts extend beyond state lines;
4. Federal agencies especially when project requires federal permits, federally owned/managed resources are impacted, project impacts several states, and when federal agencies have expertise and data sources useful for review and multi-state jurisdiction;
5. All Tribal governments in project area or zone of impacts;
6. Collaboration initiated early and exercised throughout, usually by forming interagency teams.

Based on the observations it would appear that the PUC and DOC staffs have met few if any of these metrics.

#### D. Observations on Alternatives Identification and Evaluation

1. Applicant proceeds to secure land easements for pipeline right-of-way along preferred route w/o transparent determination by DOC that such land acquisition is allowed and would not prejudice selection of possible alternative routes.  
**Results: Applicant appears confident that all proposed system alternatives will be rejected and its investments in purchasing easements will not be lost. Applicant is highly motivated to defend narrow scoping of environmental review thus reducing risk of lost investment.**
2. PUC and DOC staffs defined the geographic scope of the project as just that segment of the overall Sandpiper pipeline project lying within the Minnesota state boundaries excluding Sandpiper segments in North Dakota and Wisconsin. The larger system components in Wisconsin, Michigan and Illinois were also excluded. **Result: For purposes of environmental review the Minnesota portion of Sandpiper project is segmented from remainder of project in North Dakota and Wisconsin and from the larger system components downstream in two other neighboring states. Limiting the geographic scope to this middle segment restricts alternatives that may involve possible relocation of the pipeline in neighboring states that could reduce impacts.**
3. Ignoring MEPA requirements to the contrary PUC and DOC staff relied on and held citizens accountable to certain CON and Routing criteria for proposing

pipeline route alternatives imposing enormous burden of proof on citizens.<sup>8</sup>

**Results: DOC staff and ALJ recommend rejection of several system alternatives that did not meet these criteria. This barrier narrowed the scope of alternatives accepted for environmental review.**

4. PUC and DOC evaded their RGU obligation to define the “purpose and need” statement for Sandpiper project and instead allowed the project proposer to craft this language to its advantage. **Result: The purpose statement (see below) prescribes the proposers preferred route that included obligatory intermediate way points thus prejudicing the scope of alternatives to be examined in environmental review. These intermediate way points appear to represent nonessential, cost related features of the project that benefit only the proposer and work to eliminate consideration of routes that may environmentally superior. EQB guidance instructs RGU’s to prohibit this manipulation of project purpose statements for precisely this reason.**

***Project Purpose (from NDPL Sandpiper Route Permit application)***

*The purpose of the Project is to transport growing supplies of oil produced in North Dakota to the terminals in Clearbrook, Minnesota, and Superior, Wisconsin. From these terminals, the crude oil can be shipped on various other pipelines, eventually providing refineries in Minnesota, and other states in the Midwest and the East Coast with crude oil.”*

Discussion: Taking advantage of the opportunity to define the purpose of its project to its own advantage the applicant crafted a definition in both public purpose and private purpose terms to gain the best of both worlds. To qualify for powers of eminent domain the project must serve the public good so the public purpose to “transport growing supplies of oil produced in North Dakota...to refineries in the Midwest and East Coast is offered. But in the same breath the applicant reserves its private purpose of transporting this oil to terminals in Clearbrook, Minnesota and Superior Wisconsin.

By adopting this “private purpose” definition of shipping oil through Clearbrook and Superior on its way to the Midwest and East Coast refineries the DOC has allowed the applicant to narrow the scope of environmental review and eliminate any alternative routes that do not pass through these intermediate points. Anyone looking at a map of Minnesota can readily see that it is difficult to connect these three points without passing through Minnesota’s most pristine waters and in-tact ecosystems. However, if the public purpose of simply transporting North Dakota oil to Midwest and East Coast refineries was used to define the project nearly all of the system alternative routes proposed by MPCA and citizen groups that avoid the pristine waters and intact ecosystems of northern Minnesota would qualify for further review.

5. PUC and DOC accept the applicant’s assertion that as part of the project’s purpose it must meet certain provisions in contracts with shippers that specify

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<sup>8</sup> See Minnesota Rule 7852.1400 ROUTE PROPOSAL ACCEPTANCE Subp. 3 “*Requirements for Other Route Sources*” that are far more restrictive than MEPA for qualifying alternative routes proposed by parties other than the applicant.

their crude oil would be shipped to ultimate market locations while passing through certain obligatory waypoints including Clearbrook Minnesota and Superior Wisconsin. **Results: DOC and PUC staffs, the ALJ and ultimately the PUC Commission agree to eliminate any system alternative from environmental review that does not pass through Clearbrook on basis that these routes would not fulfill the company's contractual obligations and the accomplish the stated "private" purpose of the project.**

6. Project proposer claimed it relied on project cost estimates established for its preferred route when it won approval from the Federal Energy Regulatory Commission (FERC) for certain tariffs the company is allowed to charge potential customers. DOC either supported or did not object to applicant's assertion that alternative routes with higher project costs would undermine the calculations used to support the already approved tariffs and therefore not meet the project's purpose. **Result: DOC facilitates elimination of project alternatives from environmental review based on economics factors alone, an action prohibited by MEPA.**

Discussion: Here DOC allows the project proposer premature entry into certain contractual obligations to interfere with the full range of reasonable alternatives. Theoretically, if this were an accepted practice project proposers could strategically craft contracts with others that preclude any and all alternative site considerations in environmental review.

7. Project proposer claims certain operational difficulties including pressure cycling issues associated with certain system alternative routes. No independent pipeline experts are consulted to vet the legitimacy of this claim. **Result: DOC and PUC staffs, the ALJ and ultimately the PUC Commission acknowledge this operational issue as a valid factor for eliminating certain system alternatives from further environmental review. According to EQB guidance and MEPA cost related aspects of project alternatives such as this are not to be allowed to prejudice scoping of alternatives.**
8. ALJ imposes even more rigorous test for viable alternatives advising public that they must demonstrate capability to actually construct pipeline on proposed route in same timeframe as proposed by applicant. PUC and DOC staff failed to recommend deletion of this finding when recommending ALJ's report to the PUC Commission. **Result: This extraordinarily limiting criterion was used as part of the basis for eliminating nearly all system alternatives from further review.**

Again referring to the criteria demonstrating expertise in selection or elimination of alternatives: (all must be met for highest quality):

1. Addressing and resolving conflicting "burden of proof" limitations for identification of alternatives routes by parties other than applicant.

2. A well defined statement of project purpose developed by the RGU is used to screen project alternatives that is not overly restrictive thus eliminating alternatives;
3. Alternative exclusion criterion in EQB rules are observed;
4. Segment of larger project for review must be logical in relation to the design of the total system or network and must not be made merely to divide a large system into exempted segments.
5. Written statement is prepared why any alternatives were excluded from further consideration;
6. Geographic scope based on project impacts on natural rather than jurisdictional or administrative boundaries;
7. Broad agreement among peer groups on data sets and methodologies used to analyze potential impacts;
8. Avoid segmenting larger projects into smaller subparts that may eliminates alternatives or narrow geographic scope of impacts assessed;
9. Economic considerations are not the sole reason for eliminating an alternative;
10. Prior land acquisition or contractual obligations not used to prejudice selection of alternatives, especially in public projects.

Once again the PUC and DOC staffs have either allowed or exercised extraordinary measures to limit project alternatives considered in environmental review. With possible exception of #5 in the list above the metrics established for demonstrating expertise identifying and evaluating project alternatives are largely unmet.

#### E. Observations on Consensus Outcomes

The key characteristics chosen to indicate whether or not broad consensus of outcomes had not been achieved due to poor execution of the proper environmental review procedures identified by the CEQ studies were:

1. Public review initiated too late after major project decisions had already be made;
2. Lengthy unfocused documents that did not aid in good decision-making,
3. Lack of collaboration that caused loss of support from sister agencies and the public,
4. Greater public controversy when citizens were convinced they were not being heard often leading to a more protracted process,
5. Extensive, time consuming revisions to draft documents;

6. Citizen or applicant lawsuits, and
7. Complaints that process takes too much time.
8. Complaints from elected leaders that process was too long and proposals being considered to further streamline it.

PUC and DOC were unable or unwilling to commence environmental review before the applicant made a series of project commitments that were subsequently allowed to limit project location (route) alternatives. Staff's efforts have produced an immense but unfocused public record that does not aid in good public decision-making for the myriad reasons set forth here. These agencies have lost necessary support from both sister agencies and the public by resisting intergovernmental collaboration and peer reviewed science and thus not building consensus agreements. The public's frustration grew with more and more evidence that they were just being listened to but not being heard.

Ultimately, citizens did resort to a lawsuit in an attempt to improve the quality of environmental review by proper methods on an appropriate slate of project alternatives. And complaints that the review and permitting process is taking far too long continue to increase threatening to undermine legislative support for MEPA and the environmental review process as a whole.

So by this final set of indicators showing the PUC and DOC's overall environmental review process outcome is far from reaching consensus and has led to this request for change in RGU.

**CEA vs. EIS –A COMMPARISON**  
**CITIZEN’S MEETING WITH EQB COMMISSIONERS ON PIPELINE EIS**  
**OCTOBER 7<sup>TH</sup>, 2015**  
 By Willis Mattison

The MEQB’s 2010 Guidance to Environmental Review opens with this clear statement:

*“The function of the Minnesota Environmental Review Program is to avoid and minimize damage to Minnesota’s environmental resources caused by public and private actions. The program accomplishes this by requiring certain proposed projects to undergo special review procedures prior to obtaining approvals and permits otherwise needed. The program assigns a unit of government—the Responsible Governmental Unit—to **conduct the review using a standardized public process designed to disclose information about environmental effects and ways to minimize and avoid them.**”*

*“...It is an information gathering process to help governmental units with permitting authority over a project **make better-informed decisions.**” (emphasis added).*

This has not been citizen’s or Tribal member’s experience with the environmental review for new pipeline projects proposed for Minnesota.

The MEQB granted authority for alternative environmental review to the Public Utilities Commission and the Department of Commerce for large energy facilities including pipelines under social, political and energy circumstances that existed over three decades ago. What those conditions were then have either been long since forgotten or are outdated. These laws and alternative rules were intended to expedite needed energy facility construction or upgrades in a more “stream lined” fashion and under an accelerated time frame to meet the circumstances of the time. These antiquated rules have long since been recognized as in need up updating but, do date no such effort has been initiated by either Department.

Until recently these two agencies have administered the alternative form of review largely under the public’s radar having applied the process more frequently to routing of high voltage power lines rather than pipelines. However, with news of recent large pipeline leaks and ruptures across the nation coupled with a series of proposals for new or expanded pipelines here in Minnesota, citizens have found good reason to learn how this process worked. Citizens began to pay closer attention to both the potential risks and impacts as well as for the proposed location of these facilities but only after reviews and permits for several previous pipelines had already been processed and permitted.

Citizens met with EQB Commissioners in December 2014 to express early concerns not only for the scope, scale, number and proposed highly sensitive locations of these new pipeline projects but to express serious early concerns for adequacy, accuracy and transparency of the alternative review process. In the ten months since this meeting citizens have fully participated in the PUC and DOC’s process and now are better prepared to provide the EQB with critical reviews of the process and state a strong case that the process is not working as intended or needed.



Ultimately, citizens found the PUC's process not only unacceptable but they also believed it to be in violation of MEPA so they filed a law suit. Now, the Minnesota Court of Appeals has agreed. We are here now to basically point out how the court ordered EIS better serves the expressed intent of the MEQB Guidelines and MEPA for pipelines and to point out serious shortcomings of the alternative process as has been administered.

Below, in abbreviated chart form are problems experienced with the current process and the corresponding solutions offered by the full EIS as ordered by the Courts. This chart will, at least in part form the foundation for our conversation with the Commissioners.

<b><u>PROBLEMS WITH THE PUC/DOC PROCESS USING CEA (ALTERNATIVE REVIEW</u></b>	<b><u>HOW AN EQB ADMINISTERD EIS CAN ADDRESS THESE PROBLEMS</u></b>
1. Extraordinary opacity – important discretionary and procedural decisions made behind closed doors.	Extraordinary Transparency, decision-making and rationale open to public and subjected to peer review and public comment.
2. Extraordinarily exclusive –Process highly legalistic, expensive and time consuming exhausting citizen resources.	Extraordinarily Inclusive – Provisions can be made for citizen's and Tribal access and inclusion, even on EIS Team and thus emulating the EQB Board
3. Unusually Arbitrary - PUC staff dictates scope, data used and analytical methods	Highly Collaborative w/multi-Agency Team of peers operating by consensus and w/ citizen/Tribe member/observers
4. Extraordinarily Litigious argued by lawyers in terms not easily understood by public. Citizens must hire attorneys.	Public debate in open forums and responses to comments – Disputes aired publically by objective scientist, economist, engineers and technicians.
5. Confusing, Complex, Contradictory- Pipeline Statutes and Rules long over-due for revising. But, MEQB cannot intervene in current project review even if Alternative Review has serious problems.	Clear, Simple, open arbitration of disputes by inter-agency panel of peers in written record - EQB also provides technical assistance to interpret and apply rules.
6. Science and Technical Info subjected to endless debate by partisans then arbitrated by Law Judge often confounding all observers.	Science of environmental review practiced by scientists, engineers and risks assessed by experts arbitrated by peer review in full public view. Substantive comments must be responded to in final document.
7. Scope of project and array of alternatives narrowed based on prerequisite project features and economic considerations insisted upon by applicant and honored by PUC/DOC over objection by most parties.	RGU exercises independent judgment about what the document ultimately will contain and how it will be prepared*. All Reasonable Alternatives considered: Technical, engineering, geographic: multi-state if necessary & includes climate; must include credible risk assessment and realistic "worst case scenario" for each alternative by qualified consultant. (*MEQB Guidance Document)
8. Industry economic needs often allowed to trump public needs to prevent pollution, impairment or destruction when reasonable alternative exists	Public need for clean environment trumps proposer's economic need as clearly required by MEPA and guidance documents

9. Filtering of risk, impact, and project alternatives by ALJ, DOC and PUC staff hindering flow of critical information needed by PUC and other permitting agencies	Unfettered flow of final EIS info to PUC Commission, permitting agencies and public including, impacts risk assessments, worst case scenarios for project and alternatives
10. E.R. writer's not responsive to public, not held to EQB requirement to respond directly to substantive comments and criticisms of document.	Well established process requiring EIS writers to address substantive comments, criticisms and completeness in final written document.
11. No provision to challenge adequacy of final E.R. document, critics must challenge permit decisions instead.	RGU's determination of EIS adequacy challengeable in District Court before permit decisions are made
12. Individual projects driving major piecemeal revamping of continental pipelines system that is ostensibly a <i>public utility</i> thus forcing permitting agencies into reactive mode.	Generic EIS very well suited inform public policy and serve as pro-active guide to continental revamping of energy systems serving a public need.
13. Industry allowed to assume government's Power of Eminent Domain as entitlement rather than a privilege afforded projects serving a clear public need for energy supply and clean environment.	Review and permitting agency judiciously extends this awesome and valuable power to private industry in exchange for proposers willing concessions to serve all aspects of public need by exploring all impacts, risks and reasonable alternatives even if alternative chosen is not preferred by proposer.
14. Loss of Objectivity rooted in DOC's conflicted mission reflected in nearly all discretionary decisions and treatment of public.	DOC relieved of conflict though interagency team of EIS writers moderated by peer review and monitored by citizens
15. No funding requested for other agency staff work on ER resulting in limited direct participation/contributions from key agencies and considerable dispute in content ER content and methods.	EQB as RGU requests sufficient funds from applicant to fund all agency staff and consultant's work on interagency EIS team that could include funding for citizen and Tribal members on team, again emulating MEQB Board.
16. Process ignores Tribal communities that are disproportionately and significantly at risk in the pipeline proposals, with communities already under health and social duress. No acknowledgement of "structural racism" or "environmental injustices" in review or permitting.	It remains to be seen how the EQB and member agencies proposed to address Tribal government consultation in the pipeline proposals and in the EIS. Tribes point to documentation of existing "Structural Racism" and policies for "Environmental Justice" by several state agencies*

\*See Minn Dept of Health and Minnesota Commissioner's commitment letters to combat "Structural Racism" at: [http://www.health.state.mn.us/divs/chs/healthequity/ahe\\_leg\\_report\\_020414.pdf](http://www.health.state.mn.us/divs/chs/healthequity/ahe_leg_report_020414.pdf) and MPCA's Environmental Justice Plan at: <http://www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html>

# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40



May 30, 2014 (Replacement Letter June 10, 2014)

Larry Hartman  
 Environmental Review Manager  
 Minnesota Department of Commerce  
 85 7th Place East, Suite 500  
 St. Paul MN 55101

Re: Extended Comment Period - Application of North Dakota Pipeline Company, LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota  
 PUC Docket Number: PL-6668/PPL-13-474  
 ERDB: 20130269

Dear Mr. Hartman:

The Minnesota Department of Natural Resources (DNR) appreciates the extension of the review period regarding the Pipeline Routing Permit Application for the Sandpiper Pipeline Project. The DNR previously submitted comments dated April 4, 2014. Please consider the following supplemental comments in addition to those submitted April 4, 2014 regarding the Pipeline Routing Permit Application.

### **Spire Valley AMA and Hatchery**

Page 18 of the April 4, 2014 DNR comment letter explains the substantial construction and leak risk concerns regarding crossing Spring Brook in or near the Spire Valley Aquatic Management Area (AMA). As explained in more detail in the April 4, 2014 letter, this area includes a trout stream and a uniquely located, highly valuable, and sensitive fish hatchery. Due to a shallow artesian aquifer, the DNR is concerned that construction in this area may intercept the aquifer, causing a possible loss of flow to the hatchery. As previously described, it is not acceptable for a loss of flow to occur, even for a few hours.

The Spire Valley Aquatic Management Area (AMA) is also federally funded by Dingell-Johnson Sport Fish Restoration funding administered by the United States Fish and Wildlife Service (USFWS). The DNR must receive federal approval prior to issuing a License to Cross Public Lands and Waters for this area and any other state administered land crossing with federal funding. Obtaining a DNR License to Cross Public Lands and Waters in areas requiring federal approval requires a considerably longer review period, as previously described on page 28 of DNR's April 4, 2014 letter. Due to the sensitive nature of this crossing, additional review information may be required compared to other federal approvals, including possibly the need for an Environmental Assessment and the associated process time.

To address concerns regarding the Spire Valley AMA, the DNR met with representatives from the North Dakota Pipeline Company, LLC (NDPC) and discussed information needs and possible solutions. The DNR appreciates the thorough coordination occurring with the project proposer regarding this topic. In order to assess the depth to the aquifer, potential project



impacts, and necessary mitigation measures (including alternative routes) near the Spire Valley AMA; the DNR is working with NDPC to carefully plan geotechnical borings in a manner that will not impact the aquifer. The DNR issues temporary leases for this type of data collection.

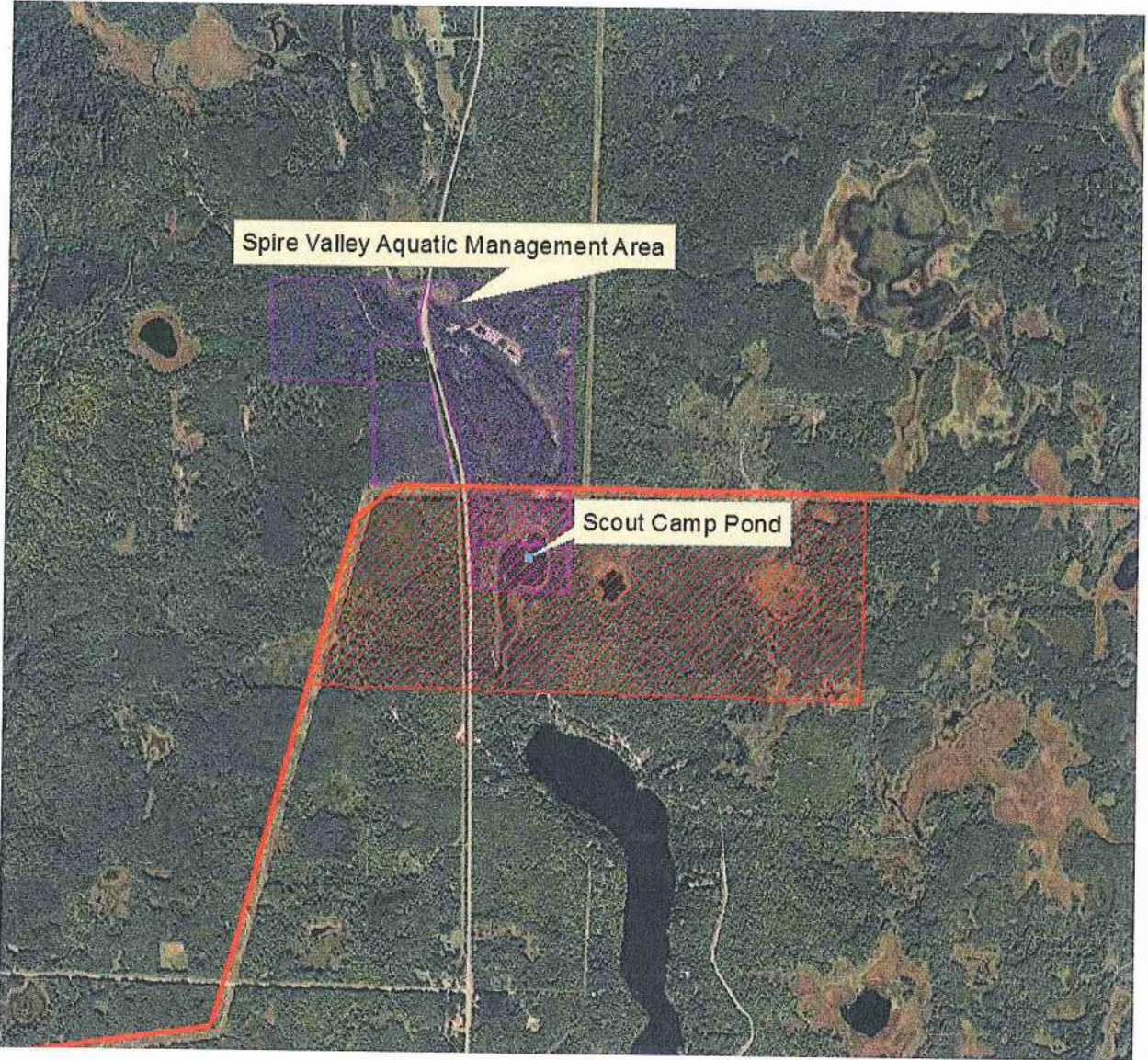
Until more investigation is completed and more engineering options are considered, there is uncertainty about the feasibility of constructing through this area. Therefore, the DNR recommends including the additional routing options described below in the CEA. Routing through this Lake Country region of the state is challenging and many options were considered before recommending route ideas for further analysis. It is important to also thoroughly explore creative engineering solutions through the AMA. For example, the CEA should clarify whether the pipeline could be buried above ground with a tunnel for the trout stream to avoid trenching the trout stream or puncturing the artesian aquifer with horizontal directional drilling.

### **Additional Routing Alternatives**

Until reviewing the CEA, the DNR *does not* advocate or support one route over another. After reviewing the CEA, the DNR may identify routing with less natural resource impacts to assist with the natural resource element of the routing criteria the PUC considers for a routing decision. We encourage, and look forward to learning from, a comparison of these routing alternatives with a variety of proposed routing alternatives from NDPC, public commenters, organizations, and government agencies to best inform the Pipeline Routing Permit decision.

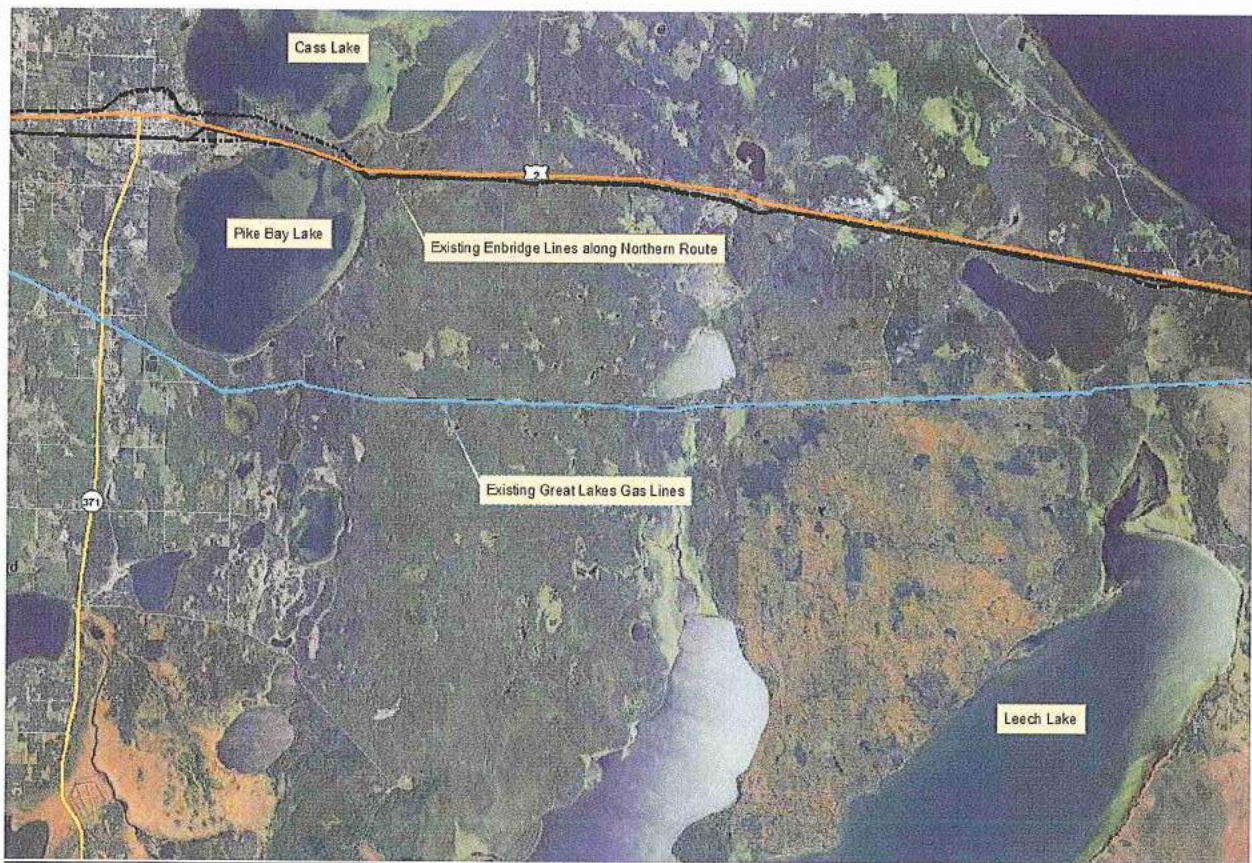
### **Spire Valley Route Widening Alternative**

The DNR recommends widening the route width to be analyzed in the CEA approximately one half mile to the south along the Preferred Route at the crossing of Spring Brook at the Spire Valley AMA. Routing just south of Scout Camp Pond may help buffer possible hydrologic impacts to the Spire Valley hatchery due to construction activities. Though this would increase greenfield routing and forestry impacts, added flexibility is needed in this area to address substantial fisheries concerns. Note that there is limited geotechnical data currently available in the vicinity of the AMA. It is possible this route width increase may not fully address concerns regarding impacts to the hatchery. More investigation is needed.



### Great Lakes Gas Lines Alternative

Page 3 of the April 4, 2014 DNR comment letter recommended analysis of the “Northern Route Alternative” in the CEA. The Northern Route would avoid the Spire Valley hatchery. A nearby corridor of existing Great Lakes Gas pipelines is located in the vicinity of the Northern Route and would also avoid the hatchery and reduce greenfield routing in comparison to the Preferred Route. This corridor would also add flexibility to the project routing process due to its periodic interconnection with the Northern Route corridor, creating various crossover segments for the Public Utilities Commission to consider. The Great Lakes Gas Lines Alternative may avoid some challenges of the Northern Route such as more populated areas and a Superfund site. The DNR recommends analyzing the Great Lakes Gas Lines Alternative corridor in the CEA as depicted in the map below or using other combinations of nearby interconnections.



### Third Party Monitoring

Third party environmental construction monitors have been required for previous pipeline and transmission projects. The DNR supports a Pipeline Routing Permit requirement for on-site third party monitors to review construction and restoration activities, considering various overlapping regulations. It has also been helpful when monitors keep agencies regularly updated. For the Sandpiper project the DNR recommends continuing this approach, with the exception of changing the method of hiring and administration of monitors' contracts.

Third party monitor(s) should not be hired by NDPC or Enbridge, but rather by a state agency such as the Public Utilities Commission (PUC) or Department of Commerce (DOC) or as a state contractor for the PUC or DOC. The position may still need to be funded by the project developer. This recommended separation in oversight is intended to increase the reporting and accountability to state agencies. Also, the DNR is concerned that environmental monitoring for a previous pipeline project ended earlier than all restoration activities. We recommend permitting language that would increase state agency direct control of environmental monitors' work assignments, reporting, and duration of monitoring. Note the distinction between PUC required monitors and various agency monitoring efforts related to permits and licenses other than the Pipeline Routing Permit (e.g. License to Cross Public Lands and Waters). This comment applies to PUC required monitors for the line as a whole.

### **Federally Funded Areas**

As discussed above and in the April 4, 2014 DNR letter, when state lands that are federally funded are crossed, additional approval and process time is needed. For additional detail, please see the list below of locations of federally funded parcels associated with the Sandpiper Preferred Route. There may be more locations associated with alternative routes proposed during review of the Pipeline Routine Permit Application.

#### Crow Wing Chain WMA (9 parcels)

T139 R33 S32 SENW  
 T 139 R33 S 32 SWNE -also The Nature Conservancy (TNC) easement  
 T 139 R33 S32 SENE - also TNC easement  
 T139 R33 S33 SWNW  
 T139 R33 S33 SENW  
 T139 R33 S33 SWNE - also TNC easement  
 T139 R33 S33 SENE - also TNC easement  
 T139 R33 S33 NWSE - also TNC easement  
 T139 R33 S33 NESE - also TNC easement

#### Spire Valley Hatchery (3 parcels)

T139 R26 S10 NESE  
 T139 R26 S11 NWSW  
 T139 R26 S33 SWSW

#### Lawler WMA

T47 R22 S6 NENW (GL03)  
 T47 R22 S6 NWNE (GL02)  
 T47 R22 S6 SWNE

#### Salo WMA (1 parcel)

T47 R22 S2 NESE

### **Cumulative Impacts**

The DNR previously recommended a robust analysis of cumulative impacts in the Comparative Environmental Analysis (CEA). Since the end of the previous comment period, Enbridge has announced a proposal for an additional pipeline, Line 3, along the Sandpiper Preferred Route. This development increases the importance of assessing cumulative impacts of possible future development such as increased corridor usage and work areas along the Preferred Route.

### **Resource Agency Coordination**

Representatives from the Minnesota Pollution Control Agency, United States Army Corps of Engineers and DNR have met during the review periods for the Sandpiper Application for a Pipeline Routing Permit. The DNR has also met with the Department of Commerce and the United States Fish and Wildlife Service. The DNR appreciates this coordination and supports the efforts of state and federal resource agencies to encourage analysis of topics including accessing various routes in the event of a leak, leak risk analysis, and reducing impacts to wetlands, lakes and streams.

Thank you for the opportunity to provide comments regarding the Sandpiper Pipeline Project. Please contact me with any questions or to set up meetings regarding DNR application input during the preparation of the CEA.

Sincerely,



Jamie Schrenzel  
Principal Planner  
Environmental Review Unit  
(651) 259-5115

cc: Scott Ek, Minnesota Public Utilities Commission  
Patrice Jensen, Minnesota Pollution Control Agency  
Bill Baer, US Army Corps of Engineers  
Jeff Gosse, US Fish and Wildlife Service  
Sara Ploetz, Enbridge



# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40



June 10, 2014

Larry Hartman  
Environmental Review Manager  
Minnesota Department of Commerce  
85 7th Place East, Suite 500  
St. Paul MN 55101

Re: Corrected May 30, 2014 Letter  
Extended Comment Period - Application of North Dakota Pipeline Company, LLC for a  
Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota  
PUC Docket Number: PL-6668/PPL-13-474  
ERDB: 20130269

Dear Mr. Hartman:

Please accept the attached resubmittal of the Minnesota Department of Natural Resources (DNR) comment letter dated May 30, 2014 regarding the Application of North Dakota Pipeline Company, LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project. The aerial photograph and map on page 4 has been replaced with an updated map to comply with the security policy of the Pipeline and Hazardous Materials Safety Administration. Please use the enclosed replacement letter in the project record and do not distribute or retain the previous version of this letter. Thank you for your assistance regarding compliance with this security policy and your consideration of our comments.

Sincerely,

A handwritten signature in blue ink that reads "Jamie Schrenzel". The signature is fluid and cursive.

Jamie Schrenzel  
Principal Planner  
Environmental Review Unit  
(651) 259-5115

Enclosure: 1

cc: Scott Ek, Minnesota Public Utilities Commission  
Patrice Jensen, Minnesota Pollution Control Agency  
Bill Baer, US Army Corps of Engineers  
Jeff Gosse, US Fish and Wildlife Service  
Sara Ploetz, Enbridge



Minnesota Department of Natural Resources  
 Division of Ecological and Water Resources  
 2115 Birchmont Beach Rd NE  
 Bemidji, MN 56601  
 218-308-2641



July 2, 2013

Sara Ploetz  
 Enbridge Pipelines (North Dakota) LLC  
 1409 Hammond Avenue, Second Floor  
 Superior, WI 54880

Re: Enbridge Sandpiper Pipeline Project – Explanation of DNR Participation in Pipeline Review and Points of Contact

Dear Ms. Ploetz,

The Minnesota Department of Natural Resources (DNR) has received multiple comment solicitations concerning the above referenced pipeline project. The purpose of this letter is to explain DNR's participation in the pipeline development process and to provide points-of-contact for each participatory role. Having a clear communication protocol established upfront will help assure both an efficient review process as well as consistent transfer of information.

The DNR participates in several review activities associated with pipeline projects:

1. **Early Coordination-** The DNR Division of Ecological and Water Resources provides prospective project developers with information and guidance (i.e. presence of resources, recommendations, general licensing and permitting information, etc.) during early coordination that can help them site and develop a potential project in a manner which avoids potential environmental impacts. As part of the early coordination process, the Regional Environmental Assessment Ecologists (REAE's) coordinate review with all DNR Divisions, compile all divisions' comments, and provide consolidated Department responses to project developers.

The Endangered Species Review Coordinator provides early coordination through the Natural Heritage letter and also provides input during both early coordination and formal environmental review documents.

All comment solicitation and general information requests should be send to the following DNR points of contact for Early Coordination:

- *\*Nathan Kestner, REAE, Reg. #1*  
 (218)-308-2672  
[Nathan.kestner@state.mn.us](mailto:Nathan.kestner@state.mn.us)
- *Rian Reed, REAE, Reg. #2*  
 (218)-999-7826  
[Rian.reed@state.mn.us](mailto:Rian.reed@state.mn.us)
- *\*Lisa Joyal, Endangered Species Review Coordinator*  
 (651)259-5109

[Lisa.joyal@state.mn.us](mailto:Lisa.joyal@state.mn.us)

*\*Indicates initial primary contact.*

2. **DNR Licensing and Permits**-The DNR manages lands that it owns, and has regulatory responsibilities over listed species, public waters and utility crossings. DNR strives to maintain consistency between comments provided to other agencies (MN Department of Commerce, Corps of Engineers, County, etc.) and our own licensing and permitting conditions.

A license must be obtained from the DNR for the passage of any utility lines crossing over or under any state land or public water. Utility project proposals in northern Minnesota typically involve a significant number of land and water crossings. Many of the different land types have specific individual review requirements and challenges. For these reasons, it is important that early coordination specific to DNR utility licensing occur parallel to the early coordination described above. The need for and contacts related to other DNR permits or approvals will be provided by the REAE's as explained above.

All licensing specific information requests should be send to the following DNR Points of Contact for DNR Licenses to Cross:

- *\*Cindy Buttleman, State Program Admin. Director, Reg. #1*  
(218)-308-2627  
[Cindy.buttleman@state.mn.us](mailto:Cindy.buttleman@state.mn.us)
- *Joe Rokala, State Program Admin. Director, Reg. #2*  
(218)-999-7894  
[Joe.rokala@state.mn.us](mailto:Joe.rokala@state.mn.us)

*\*Indicates initial primary contact.*

3. **Formal Environmental Review** - DNR recommendations are provided to the Department of Commerce, Energy Facility Permitting (EFP) unit and Public Utilities Commission (PUC) during the combined environmental review and route permitting phase. As part of the formal environmental review process, the DNR Central Office will lead the department responses and will issue letters and attend PUC meetings based on the regions' comments.

All requests regarding DNR's involvement during formal environmental review process should be send to the following DNR Points of Contact:

- *Jamie Schrenzel, Principal Planner, DNR Central Office*  
(651)-259-5115  
[Jaimie.schrenzel@state.mn.us](mailto:Jaimie.schrenzel@state.mn.us)

The DNR looks forward to working in a positive and collaborative manner on this project to ensure projects goals are achieved while protecting Minnesota's natural resources. We have begun our early coordination review process and will be in contact with you once DNR internal comments are received and compiled.

With the exception of DNR Lands and Minerals staff listed above and the Endangered Species Review Coordinator, all communications from the DNR will come from the REAE's until the project transitions into formal environmental review. For the reasons stated above, please use the contacts above for all communications. A DNR regional map is available at [http://files.dnr.state.mn.us/aboutdnr/dnr\\_regions.pdf](http://files.dnr.state.mn.us/aboutdnr/dnr_regions.pdf).

Please contact me directly at (218)-308-2672 if you have any questions.

Sincerely,



Nathan Kestner  
Regional Environmental Assessment Ecologist – Reg. 1  
Division of Ecological and Water Resources

cc:

Cindy Buttleman, DNR  
Courtland Nelson, DNR  
Diane Anderson, DNR  
Jamie Schrenzel, DNR  
Jeff Lightfoot, DNR  
Joe Hiller, DNR  
Joe Rokala, DNR  
John Williams, DNR  
Lisa Joyal, DNR  
Pamela Arndt, DNR  
Pat Collins, DNR  
Peter Buesseler, DNR  
Rian Reed, DNR

Minnesota Department of Natural Resources  
 Division of Ecological and Water Resources  
 2115 Birchmont Beach Rd NE  
 Bemidji, MN 56601  
 218-308-2672



August 14, 2013

Sara Ploetz  
 Environmental Analysis II  
 Enbridge Pipelines (North Dakota) LLC  
 1409 Hammond Ave  
 Superior, WI 54880

Re: Enbridge Sandpiper Pipeline Project – DNR Early Coordination Review

Dear Ms. Ploetz,

The Minnesota Department of Natural Resources (DNR) has received information concerning the above referenced pipeline project proposal. Based on the information provided to date, we understand that Enbridge Pipelines (North Dakota) LLC (Enbridge) is proposing to build a new pipeline that will begin at Enbridge's Beaver Lodge station south of Tioga, North Dakota to Clearbrook, Minnesota and will continue to Enbridge's terminal in Superior, Wisconsin. The project will transport growing supplies of North Dakota crude petroleum to Superior terminal and then connect to various other pipelines, eventually providing refineries in the Midwest and eastern Canada with crude oil. In Minnesota, the Sandpiper southern/preferred route would cross portions of Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties. The northern route would cross portions of Polk, Red Lake, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, and Carlton Counties.

Information provided for review includes electronic shapefiles for two approximately two-mile width route corridors which extend across the above mentioned counties. In recent conversations with Enbridge staff we learned that Enbridge does not view the northern route as a viable route and therefore is not expending further resources exploring it (July 30<sup>th</sup> personal communication with Sara Ploetz). Further we understand that all current efforts are focused on the southern route as the preferred route. We also understand that the Public Utilities Commission (PUC) Pipeline routing Application will include rationale for rejection of the routing alternatives. Based on this conversation, and in the interests of efficiency; DNR comments for the southern route are more extensive and based on both a desktop GIS review and interdisciplinary comments from DNR staff (information on the northern route based on a desktop review).

The DNR is providing this **early coordination preliminary review** as a mechanism to collaboratively work together to identify and avoid potential impacts to natural resources found within the project area (see DNR July 2<sup>nd</sup> letter for an explanation of DNR review activities associated with pipeline projects). This review specifically describes:

- I. DNR's regulatory role and permitting information,
- II. General pipeline impacts, and
- III. State administered lands and high value resources within the pipeline route corridors.

DNR recommendations (and in some cases directives) are included throughout this review and for emphasis, are in "**bold**" text.

## **I. DNR Regulatory Role and Permitting Information**

The DNR has jurisdiction over wildlife in Minnesota and administers the Minnesota Outdoor Recreation System (MINN. STAT. § 86A and § 84.027, subd. 2). The Minnesota Outdoor Recreation System managed by the DNR includes: Wildlife Management Areas, Scientific and Natural Areas, State Parks, State Forests, State Recreation Areas, and other DNR managed lands. The DNR reviews and comments on projects in order to meet statutory obligations that have been developed to ensure natural, recreational, and cultural resources are protected for the enjoyment of all residents of Minnesota and our visitors.

Project developers intending to cross over, under, or across any state land or public water with any utility (pipelines, power lines, etc.) need to first secure a DNR license to cross (Minnesota Statue 84.415). Information on how to obtain a License for Utility can be found at [http://www.dnr.state.mn.us/permits/utility\\_crossing/index.html](http://www.dnr.state.mn.us/permits/utility_crossing/index.html). DNR Division of Lands and Minerals (LAM) coordinates DNR staff license reviews and issues utility licenses to cross public waters and state lands managed by the DNR. For large linear projects such as pipelines, DNR requires application for and typically issues, one comprehensive land crossing license and one comprehensive public water crossing license for each phase. It is important to allow adequate time for all license review components. For example, crossing of state lands that were acquired with funding restrictions usually requires additional review time. Please use the link above or call DNR LAM at 218-308-2627 (northwest region) or 218-999-7894 (northeast region) as soon as possible to identify all requirements.

Many times pipeline projects require dewatering during construction. A water use (appropriation) permit from DNR Waters is required for all users withdrawing more than 10,000 gallons of water per day or 1 million gallons per year. Additional information about DNR water use permits is available at [http://www.dnr.state.mn.us/waters/watermgmt\\_section/appropriations/permits.html](http://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/permits.html)

Significant wetland acreage is present within the project boundary. Activities that impact wetlands many times involve overlapping local, state and federal regulations. Information about wetland regulation in Minnesota (along with regulator contact information) is available at <http://www.bwsr.state.mn.us/wetlands/regulation.html>.

Calcareous fens are rare and distinctive peat accumulating wetlands which have additional legal protected in Minnesota. Calcareous fens are designated as “outstanding resource value waters” in water quality regulations administered by the MPCA (Minnesota Rules part 7050.0180) and they are given special protection through Minnesota Rules part 8420.1010 - 8240.1060. The Wetlands Conservation Act (WCA), authorized by Minnesota Statutes 103G.223, states that calcareous fens may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, except as provided for in a management plan (i.e. Fen Management Plan [FMP]) approved by the Commissioner of the Department of Natural Resources.

Many of the unique characteristics of calcareous fens result from the upwelling of groundwater through calcareous substrates. Because of their dependence on delicate groundwater hydrology, calcareous fens can be indirectly affected by activities several miles away from the fen.

In addition to the protection afforded by the WCA, destruction of any state-threatened plants occurring on a calcareous fen may be regulated under Minnesota’s endangered species law (MINN. STAT. § 84.0895). For additional information, see the DNR website at: <http://www.dnr.state.mn.us/ets/index.html>.

## II. General Pipeline Impacts

### General Comments:

DNR seeks to avoid, minimize all potential impacts and may also seek compensatory mitigation for unavoidable impacts. Potential environmental impacts from pipeline construction and operation include but are not limited to:

- Geology and soils: Pipelines may cross through areas of unstable soils, steep or rocky terrain, or bedrock. Erosion and sedimentation are concerns, along with the mixing of soil horizons. Fuel and hydraulic fluid contamination of soils during construction is a very real possibility, and a break in a functioning pipeline can quickly contaminate a large area.
- Public lands: The crossing of public lands can affect natural communities, habitat, and the quality of recreational experiences. Parcels, such as wildlife management areas and waterfowl production areas, usually can be avoided.
- Vegetation: Clearing the right-of-way and work areas of vegetation can have short-term and long-term consequences (habitat loss, degradation, and fragmentation). High quality, high value natural communities, wetlands, and other large blocks of habitats should be avoided.
- Wildlife: Pipeline construction results in the loss and fragmentation of wildlife habitat. The pipelines themselves do not impair the movement of species along migration corridors. Cleared and maintained rights-of-way, however, create barriers to movement for many species, give advantage to predators, and encourage the spread of invasive species. Special wildlife areas, such as rookeries, wildlife management areas, scientific and natural areas, prairie bank easements, areas of biodiversity significance, and key habitats for species of greatest conservation need (SGCN) should be avoided.
- Fisheries: Pipelines cross perennial and intermittent streams, cold water and warm water streams, and designated trout streams; and may affect high quality or high value fisheries (e.g. trout streams). Erosion and sedimentation, resulting from construction activities, impair water quality and aquatic habitats. Close attention needs to be paid to the crossing techniques to be used. DNR utility licenses to cross public waters may require specific crossing methods.
- Ground and surface water: Fuel and hydraulic spills, which are common on pipeline construction projects, have potential to contaminate ground and surface waters. While environmental review is typically focused on pipeline construction, the pipeline will remain a potential hazard throughout its useful life. Out of sight, breaks in the line can go unnoticed until the pipe's contents rise to the surface or emerge in waterways.

## III. State Administered Lands & High Value Resources within the Pipeline Route Corridors

Numerous state parcels, public waters, and other high value resources occur throughout the project corridor provided. Shapefiles for many of the lands and high value resources listed below are available from for free download from the DNR Data Deli at <http://deli.dnr.state.mn.us/>. **DNR expects that potential impacts to all resources discussed in early coordination documents be fully assessed as part of forthcoming formal environmental review.** Following is a list of high value resources within the pipeline corridor provided for review along with recommendations for avoiding potential impacts.

## State Administered Lands

Crossing of public lands can affect natural communities, habitat, and the quality of recreational experiences and in some cases conflict with the purposes for which certain areas were established. State, federal, and non-profit conservation groups have expended a considerable amount of time and money to acquire and manage these properties. Likewise, it is the DNR's preference to avoid, when possible, all potential adverse impacts to DNR administered lands. Shapefiles for all of the state managed lands included below are available through the DNR data deli. As part of any DNR license or approval associated with state administered lands, DNR will require that access to those lands be maintained at all times (i.e. survey work, during and after construction, etc.).

At the time of this review, temporary access permits are being applied for by Enbridge to gather data in close proximity the preferred route alignment. Please note that allowing access and data collection in these areas by no means is considered tacit approval by DNR.

### Minerals

For the preferred route, the footprint for the pipeline study area intersects 3,083 state-owned parcels (trust, tax forfeit, con-con etc.), and also intersects an additional 1,300 parcels where the State owns a mineral interest but not the surface. This analysis has not been conducted for the north route, however; it is likely that similar mineral resources exist along that alignment.

There is significant active metallic mineral exploration activity taking place in the vicinity of the Aitkin-Carlton County boundary. State metallic mineral leases have been issued for most of the state-owned mineral interests in the Tamarack area, covering townships T48N-R22W and T49N-R22W in Aitkin County, and also the northwest quarter of Township T47N-R21W and southwest quarter of T48N-R21W in Carlton County. Paragraph 5 of the State's metallic mineral lease form (MN Rules 6125.0700) requires that the mineral lessee be consulted prior to issuance of any other surface leases, permits or licenses, and such leases, permits or licenses shall not unduly interfere with the exploration or mining operations conducted on the leased mining units. The study area route intersects active leases involving School Trust, State Acquired, Consolidated-Conservation, and Tax-Forfeit mineral rights. **DNR recommends that the project proposer (Enbridge), mineral owner (State), and mineral lessee (Kennecott Exploration Company) meet to determine if potential conflicts may exist where the study route intersects the active lease area. Additionally, Aitkin and Carlton County Land Departments administer the surface of Tax-Forfeit lands in their respective Counties, including many surface parcels where active state mineral leases are in effect. It will be important to consult with the County tax-forfeit surface administrators so that they are informed and aware of mineral lease implications for the tax-forfeit surface estate in the area.**

Kennecott Exploration Company holds the following state metallic mineral leases that intersect the study route:

T48N-R22W, Sections 31-36: leases MM9774P, MM10327 thru MM10331

T48N-R21W, Sections 31-33: leases MM9810, MM9811, MM9854N, MM9855N, and MM9856N

T47N-R21W, Sections 4-8: leases MM10176, MM9805, MM9806, MM10124N, MM10125N

### Other Mineral Estate Mineral Resources (iron and nonferrous metallic minerals)

Along most of the study route, metallic mineral resources are avoided. The study route successfully avoids known iron resources of the Mesabi, Cuyuna and Emily iron districts. The study route crosses two bedrock greenstone belt terranes in the western half of Minnesota. While these bedrock belts may attract mineral exploration activity at some future date, they are relatively unexplored at present due to thickness of overlying glacial materials. There are no presently known mineral resources along the western half of the study route. The study route also passes through an area in central Carlton County that has



experienced repeated episodes of metallic mineral exploration (where the study route passes through Ranges 18W and 19W).

Surface Estate Mineral Resources (aggregate, crushed stone, peat, etc.)

**Where surface estate mineral resources exist, compensation would be required for any encumbrance that precludes extraction activities due to the presence of the pipeline.** Features such as the pipeline, associated setback and sloping requirements, areas of infrastructure, permanent access roads, etc. that encumber surface estate mineral resources would be evaluated (at proposer expense) at the time the route is finalized.

Peatland SNA's

There are approximately 6 million acres of "peatlands" in Minnesota; lands where the underlying substrate consists primarily of peat organic soils. Some of these peatlands are of world-wide significance, and contain some of Minnesota's last true wilderness. Acre upon acre of spruce, tamarack and sedge fens and wetlands exist here with little penetration by roads or human habitation. In 1978, the Minnesota DNR began evaluating the peatlands of Minnesota. As a result of this early effort, all of Minnesota's 6 million acres were evaluated as to their ecological significance, and recommendations were made to identify the most fragile and unique of all of the peatland acres in the state.

A report entitled [Recommendations for the Protection of Ecologically Significant Peatlands in Minnesota PDF](#) (5.9 Mb) was published in 1984. Eighteen ecologically significant peatlands were identified in this report.

Legislation passed in 1991 included the [Peatland Protection Act](#). In this legislation, each of the 18 peatlands identified in the 1984 report were given SNA status. While SNA's in general are afforded the greatest protection relative to other state managed lands; Peatland SNA's differ from other SNA's in that there are additional regulations regarding activities on peatland SNA's. **Construction of new corridors of disturbance associated with pipelines through Peatland SNA's is a prohibited activity** [[MN Statutes 84.035 Subd5\(a\)5](#)].

Following is a list of Peatland SNA's within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route	
N/A	
Northern Route	
Wawina Peatland SNA	

Wildlife Management Areas (WMA's)

As provided by Minnesota Statutes, section 86A.05, WMA's are established, *"to protect those lands and waters which have a high potential for wildlife production and to develop and manage these lands and waters for the production of wildlife, for public hunting, fishing, and trapping, and for other compatible outdoor recreational uses"*.

Following is a list of Wildlife Management Areas (WMA's) within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route	
Polk WMA	McGregor WMA
Timber Doodle WMA	Grayling Marsh WMA*
Lessor WMA	Lawler WMA*
Enerson WMA	Upper Rice WMA
Mud Lake WMA	Salo marsh WMA*

Lowe WMA	
Crow Wing Chain WMA*	
Northern Route	
Lessor WMA	Polk WMA
Enerson WMA	Timber Doodle WMA
Polk WMA	West Four Legged Lake WMA
Bemidji Slough WMA	Swan River Deer Yard WMA

\*Crossing appears unavoidable based on corridor provided

#### Aquatic Management Areas (AMA's)

As provided by Minnesota Statutes, section 86A.05, AMA's are established, "to protect, develop, and manage lakes, rivers, streams, and adjacent wetlands and lands that are critical for fish and other aquatic life, for water quality, and for their intrinsic biological value, public fishing, or other compatible outdoor recreational uses".

Following is a list of AMA's within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route	
La Salle Creek AMA	Spire Lake Hatchery AMA
Straight River AMA	Blackhoof River AMA
Snowshoe Lake AMA	
Northern Route	
Clearwater River AMA	Grace Lake AMA
Necktie River AMA	Prairie River AMA
Blackberry Lake AMA	Bruce Creek AMA
Ahmik Reek AMA	Otter Creek AMA
Little Otter Creek AMA	

\*Note – Some of the AMAs listed above are also included below as state conservation easements.

#### State Conservation Easements (MS Chapter 84C)

As provided by Minnesota Statutes, section 86C.01, conservation easements refer to, "nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property".

Following is a list of conservation easements within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Straight River Trout Stream Easements (Hubbard County)
Shell River Conservation Easement (T139N, R35W, S20)
Northern Route
Clearwater River Trout Stream Easements (Beltrami County)
Necktie River Trout Stream Easements (Hubbard County)
Little Otter Creek Trout Stream Easement (Carlton County)

### Prairie Bank Easements

Following is a list of the prairie bank easements within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Lake Pleasant Prairie Bank Easement
Northern Route
N/A

### State Parks

As provided by Minnesota Statutes, section 86A.05, state parks are established, *“to protect and perpetuate extensive areas of the state possessing resources which illustrate and exemplify Minnesota's natural phenomena and to provide for the use, enjoyment, and understanding of such resources without impairment for the enjoyment and recreation of future generations”*.

Following is a list of state parks within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Itasca State Park
Jay Cooke State Park
Northern Route
Jay Cooke State Park

### State Recreation Areas (SRAs)

As provided by Minnesota Statutes, section 86A.05, SRA's are established, *“to provide a broad selection of outdoor recreation opportunities in a natural setting which may be used by large numbers of people”*.

Following is a list of SRA's within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
LaSalle lake SRA
Northern Route
N/A

### State Forests

As provided by Minnesota Statutes, section 86A.05, state forests are established, *“...for growing, managing, and harvesting timber and other forest crops and for the establishment and development of recreational areas and for the protection of watershed areas, and the preservation and development of rare and distinctive species of flora native to such areas...”*.

Following is a list of state forests within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
White Earth State Forest
Mississippi Headwaters State Forest
Huntersville State Forest
Foothills State Forest
Land O' Lakes State Forest
Hill River State forest

Waukenabo State forest
Savanna State Forest
Fond Du Lac State Forest
Northern Route
Mississippi Headwaters State Forest
Bowstring State Forest
Savanna State Forest
Fond Du Lac State Forest

#### DNR Division of Forestry Administered Lands/School Trust Fund lands

Many state land parcels administered by DNR Division of Forestry are situated within the projects corridors. These areas are some of the most productive forestry lands in the state and pipeline construction through them (and maintenance) would be detrimental to future revenues. Routes passing through School Trust Lands must produce maximum long term economic return for the Trust. Normal reimbursement for existing timber would be common to all forest lands but land types (School trust, Con-Con, etc.) will impact specific compensation and there may be variability that will need to be determined.

#### State Trails

As provided by Minnesota Statutes, section 86A.05, state trails are established *"to provide a recreational travel route which connects units of the outdoor recreation system or the national trail system, provides access to or passage through other areas which have significant scenic, historic, scientific, or recreational qualities or reestablishes or permits travel along an historically prominent travel route or which provides commuter transportation"*.

Following is a list of state trails within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Willard Munger State Trail (2 crossings) – Carlton County
Paul Bunyan State Trail – Cass County
Red River of the North Water Trail
Mississippi River Water Trail (2 crossing s)
Red lake River Water Trail (2 crossings)
Crow Wing River Water Trail
Pine River Water Trail
Northern Route
Mississippi River Water Trail (2 crossing s)
Paul Bunyan State Trail – Beltrami, Hubbard
Heartland State Trail - Cass
Taconite state Trail - Itasca
Willard Munger State Trail (2 crossings) – Carlton County

DNR understands that pipeline projects crossing rivers many times require use of temporary bridges and crossings of trails require detours. Temporary bridges and other trail obstacles that are kept in place during the construction period will be obstacles to such traffic, and perhaps at times involve safety issues.

Other public and non-profit lands such U.S. Fish and Wildlife Waterfowl Productions Areas (WPA), National Wildlife Refuges and The Nature Conservancy (TNC) lands occur in the area. The land managers for these areas should be contacted individually for their respective requirements and recommendations.

**Pipeline construction through areas has the potential to conflict with the purposes for which they areas were established (purposes for establishment stated above). Likewise, it is the DNR's preference to avoid, when possible, potential adverse impacts to DNR administered lands.**

### **Other High Value Resources**

#### Trout Streams

Many trout streams occur within the project corridor provided for review. For the preferred route it appears that six trout stream crossings may be unavoidable (many more within corridor). For the northern route it appears that three would be difficult to avoid crossing. A GIS shapefile showing legally designated trout streams and trout stream tributaries (as identified in Minnesota Rules Chapter 6264) is available through the DNR data deli.

**DNR recommends avoidance of all trout water crossings when practical. Due to the sensitive nature of these special waters, be advised that information needs and crossing requirements through these areas will be greater. We also recommend exploring the feasibility of incorporating shut-off valves in close proximity to trout stream crossings to minimize impacts in the event of a failure.**

#### Calcareous Fens

The DNR maintains a list of known calcareous fens, which is available at the DNR's website at: <http://www.dnr.state.mn.us/eco/wetlands.html>. Based on the most current list, one calcareous fens occurs both within and in close proximity to the route corridor provided.

Calc Fen Name	Location (TRS)
Clearbrook Fen	149N037W - 17

The DNR data deli includes a point shapefile (nhis\_mnfent3) which represents the official list of calcareous fens, however; calcareous fens are also included in the Rare Features Data and in the MBS Native Plant Communities data set. The point file is a screening tool only and the MBS Native Plant Communities (NPC) is a polygon shapefile that include delineated calcareous fens. Some fens are so small that they may not show up on the MBS NPC shapefile. All identified calcareous fens, whether on the official list or not, are included in the Rare Features data provided by the Endangered Species review Coordinator. There are likely many yet to be identified calcareous fens in MN. **Likewise it is important that staff providing wetland delineation and species surveys have the proper training and ability to identify calcareous fens and rare species.** This will be especially important in the beach ridge areas associated with historic Lake Aggasiz (i.e. Polk, Red Lake and Clearwater Counties).

**Due to the unique characteristics of these resources and difficulty in approving impacts, DNR recommends that avoidance of impacts to calcareous fens be given high priority. Please contact DNR Regional Groundwater Specialist Michelle Walker at 218-308-2664 for questions about calcareous fens and FMP requirements.**

#### Public Waters

Numerous public water courses, public waters basins and public water wetland occurred throughout the route corridor provided. Since many of the watercourses extend across the entire corridor, crossings will likely be unavoidable, however; minimizing the number of crossing is possible. Avoiding and minimizing public water crossing will help to avoid potential impacts to water quality and fish and wildlife habitat.

Since it would be inefficient to list all public waters in the project area; **DNR recommends that Public Waters shapefiles be download from to data deli (link provided above) and used during route planning to avoid and minimize water crossings to the extent possible.**

**As part of future environmental review and permitting documents, DNR expects Enbridge to adaptively manage crossing proposals based on lessons learned from recent past projects.** In deciding specific crossing requirements, DNR will also take into consideration lessons learned on past projects. For example, situations which were problematic in the past due to various factors such as significant bank slumping, flowing soils, frac-outs, etc. will be treated differently as to: what types of crossings will be considered (trenching, directional drilling, etc.), pre and post construction survey requirements, restoration requirements, long-term monitoring, and potentially mitigation requirements for crossings that don't go according to plans. In order to maximize habitat function and to help maintain the natural character, DNR prefers use of natural restoration methods and/or bio-engineering when practical.

**In order to inform specific crossing requirements and minimize the potential impacts for impacts to public waters, DNR may require more detailed geological and waters survey information in proximity to more sensitive public water crossing.** As part of their review process DNR lands and Minerals will solicit input from area staff both general and specific comments on the many public waters crossings.

#### Wetlands

Considerable wetlands occur throughout the project corridor. The alteration most commonly encountered with pipelines is - through disturbance and an inability to re-establish pre-existing wetland vegetation – a conversion in wetland type to a deeper water habitat. As an area becomes wetter, the first effects on vegetation of increased saturation include the invasion of species more characteristic of marshes. Many times these are invasive species such as hybrid cattail that form monotypic stand with limited habitats value. The result can be a significant modification or loss of ecological function and biodiversity.

**DNR recommends avoidance and minimization of crossings. Where crossings are needed, winter construction is preferred to minimize wetland impacts due to construction.** This is especially important in sensitive and difficult to restore wetlands such as bogs and fens.

The WCA exempts impacts for pipelines projects only **IF:** impacts have been avoided and minimized to extent possible (usually not a problem to demonstrate), **AND** the project (cannot be split into components to meet an exemption) significantly modifies or alters (notice it does not say impacts) less than .5 acres of wetland. Upon review of recent air photos along the most recent Enbridge pipeline project expansion corridor (alterations specific to most recent work) one will observe significant wetland modification and alteration which exceeds .5 acres. Furthermore, **the need to provide and maintain access to properties (public and private lands) and the project corridor usually results in additional wetland impacts. Such impacts should be estimated and included as part of the project.**

DNR has begun coordination with the MN Board of Water and Soil Resources (BWSR) and the Army Corps of Engineers in regards to wetland impacts due to pipeline construction and mitigation needs.

Another consideration is the projects potential to impact easements associated with wetland mitigation sites. **DNR recommends contacting the BWSR to obtain locations of wetland mitigation easements throughout the project corridors.**

#### Large Block Habitats

Large blocks of habitat and habitat complexes (grassland, wetlands, or forest) can provide an increased diversity and abundance of wildlife. A large block of habitat is a function of increased acres and shape of the patch. Larger rounder or square blocks provide interior habitat that is more isolated from noise, pollution, parasitic birds, and predators associated with edges of fragmented habitat. Habitat complexes consist of a combination of various resources, which may not be significant on their own, but form a habitat complex or mosaic, that concentrates wildlife. Area sensitive species require large blocks of intact and contiguous habitat in order to successfully reproduce. Direct habitat loss, habitat degradation, and fragmentation can occur when locating pipelines across large blocks of habitat and habitat complexes.

While not as abundant as other parts of the state, large block habitats consisting of wetlands, grasslands and forested areas do occur throughout the project area. Many of these are also native plant communities, areas of biodiversity significance, and key habitats for SGCN.

**DNR recommends that, to the extent feasible, the project avoid fragmenting large contiguous block of habitat of 40 or more acres.**

#### Rare Species

Information contained in this section is not a surrogate for information provided by DNR Natural Heritage and Nongame Research Program staff. We understand that you have begun coordination with the DNR Endangered Species Coordinator in regards to receiving the most recent rare species information and survey requirements. **All questions about rare species and associated requirements should continue to be directed to Endangered Species Review Coordinator at 651-259-5109.**

Minnesota endangered species law (Minnesota Statutes Section 84.0895) and associated rules (Minnesota Rules Part 6212.1800 to 6212.2300 and 6134) prohibit the taking of endangered or threatened species without a permit. Surveys may be required in order to determine if takings may occur. **Project planning should take into account that some species can only be surveyed at specific times of the year.**

#### Areas of Biodiversity Significance and Native Plant Communities (NPC's)

At the conclusion of work in a geographic region, Minnesota Biological Survey (MBS) ecologists assign a biodiversity significance rank to each survey site. A site's biodiversity significance rank is based on the presence of rare species populations, the size and condition of *native plant communities* (NPCs) within the site, and the landscape context of the site (for example, whether the site is isolated in a landscape dominated by cropland or developed land, or whether it is connected or close to other areas with intact native plant communities). These ranks are used to communicate the statewide native biological diversity significance of each site to natural resource professionals, state and local government officials, and the public.

The biodiversity ranks help to guide conservation and management. The Minnesota Biological Survey (MBS) has identified many Sites of Biodiversity Significance within and adjacent to the proposed project corridor. Since coverage is not continuous across the projects corridors, a comparative analysis is not provided as part of this review.

GIS shapefiles of MBS Sites of Biodiversity Significance and Native Plant Communities can be downloaded from the DNR Data Deli, however; MBS data for Clearwater County, Beltrami, Hubbard, Cass, Itasca, and Aitkin counties are not yet complete and/or publically available through the DNR data deli. **The DNR Endangered Species Review Coordinator should be contacted at the number provided above for obtaining preliminary shapefiles for areas for which data exists.**

**We encourage you to consider a project route and alignment alternatives that would avoid direct impacts to Areas of Biodiversity Significance and Native Plant Communities (NPC's). For unavoidable impacts, we recommend impact minimization. In addition, Best Management Practices should be implemented in order to minimize indirect impacts such as the introduction or spread of invasive plant species.**

#### Rare Natural Plant Communities

Permanent impacts to rare natural communities are not allowed by the Wetland Conservation Act (WCA) ([MN Rule 8420.0515 Subp. 3](#)). Rare natural communities under WCA are defined as:

*“Native plant communities (NPCs) having a conservation status rank of S1, S2, or S3 that are mapped or determined by the DNR to be eligible for mapping in the Natural Heritage Information System; or*

any native plant community that is contained within an area mapped or determined by the MBS to be eligible for mapping in the Natural Heritage Information System as having an Outstanding or High biodiversity significance ranking." See

[http://www.bwsr.state.mn.us/wetlands/wca/guidance/Rare\\_natural\\_communities.pdf](http://www.bwsr.state.mn.us/wetlands/wca/guidance/Rare_natural_communities.pdf).

**DNR recommends that disturbance to rare natural plant communities be avoided.** A crosswalk between NPCS and associated conservation status ranks is available at [http://files.dnr.state.mn.us/natural\\_resources/npc/s\\_ranks\\_npc\\_types\\_npc\\_types\\_&\\_subtypes.pdf](http://files.dnr.state.mn.us/natural_resources/npc/s_ranks_npc_types_npc_types_&_subtypes.pdf)

As mentioned above, the project will have impacts to NPC's that qualify as "rare natural communities" under the WCA. The local government unit (LGU) is responsible for determining whether permanent impacts to rare natural communities will occur and whether proposed actions qualify for exemptions. In most cases the LGU is either the County or the County SWCD. For state lands, MNDNR is the WCA LGU. **The applicant should be sure to contact all LGUs to begin coordination for WCA compliance.**

Old Growth Forests, Ecologically Important Lowland Conifers (EILCs), Representative Sample Areas (RSA), and High Conservation Value Forests (HCVF's)

**DNR recommends avoidance of all old growth special management zones (330' surrounding the old growth perimeter), RSA's, EILCs, and HCVFs.** For more information about these sensitive forest resources, please contact NE Regional Plant Ecologist / MCBS Botanist, Bruce Carlson at 218-723-4763 or email at [bruce.carlson@state.mn.us](mailto:bruce.carlson@state.mn.us).

Species of Greatest Conservation Need (SGCN) and Key Habitats

Every state recently completed a "state wildlife action plan (SWAP)" which identifies conservation needs, actions and priorities for species of concern, including threatened and endangered wildlife and other important wildlife species. Much of the species documentation within Minnesota's SWAP is provided by the MBS. Minnesota's SWAP titled, "*Tomorrow's Habitat for the Wild and Rare*" describes conservation concerns for species of greatest conservation need (SGCN) and their *key habitats* within various landscape settings (characterized using the Ecological Classification System [ECS]).

SGCN are defined as species whose populations are rare, declining, or vulnerable to decline and are below levels desirable to ensure long-term health and stability (includes threatened and endangered species). *Key habitats* are defined as the habitats most important to the greatest number of SGCN. Key habitats are specific to individual ecological subsections and are not found everywhere in the state.

The MDNR and the U.S. Forest Service developed the ECS for ecological mapping and landscape classification following the National Hierarchical Framework of Ecological Units (Ecomap 1993). ECS mapping enables resource managers to consider ecological patterns for areas as large as North America or as small as a single timber stand and identify areas with similar management opportunities or constraints relative to that scale. There are eight levels of ECS units in the United States. Map units for six of these levels occur in Minnesota: Provinces, Sections, Subsections, Land Type Associations, Land Types, and Land Type Phases. The project corridor provided crosses three of Minnesota's four Ecological Provinces (Prairie Parkland, Tallgrass Aspen Parkland, and Eastern Broadleaf Forest). These Provinces include three (26 total in MN) respective Ecological Subsections (i.e. Red River Prairie, Aspen Parklands, and Hardwood Hills).

Subsection profiles (which includes conservation actions and priorities) are available at <http://www.dnr.state.mn.us/ecs/index.html>. GIS shapefiles for subsections are also available through the DNR data deli.

Minnesota's SWAP identifies 292 SGCN in the state. Each of the species was evaluated to determine the factors influencing their rarity, vulnerability, or decline. The results of the species analysis indicated that habitat loss and degradation are the most significant challenges facing Minnesota's SGCN. A copy of



Minnesota's SWAP is available online at [http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/chapters\\_appendix/tomorrows\\_habitat\\_toc.pdf](http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/chapters_appendix/tomorrows_habitat_toc.pdf).

Pipeline construction and ongoing maintenance has the potential to directly and indirectly affect key habitats and the SGCN that use them. Identified key habitats within subsections mentioned above are provided in the following table:

Ecological Subsection	Key Habitats
<a href="#">Red River Prairie</a>	Prairie, Forest-Lowland Deciduous, Wetland-Nonforest, River-Headwater to large, River-Very Large (Red River)
<a href="#">Aspen Parklands</a>	Shrub/Woodland-Upland (Brush prairie), Wetland-Nonforest (Wet prairie), grasslands, lake-shallow, River-Headwater to Large
<a href="#">Hardwood Hills</a>	Forest-Upland Deciduous (aspen-oak), Forest-Upland Deciduous (Hardwood), Shrub/Woodland-Upland (Oak savanna, Brush prairie), Prairie, Wetland-Nonforest, Grassland, Lake-Shallow, River-Headwater to large
<a href="#">Chippewa Plains</a>	Forest-Upland Coniferous, Shrub/Woodland-Upland (Jackpine woodland), Wetland-Nonforest, River-Headwater to Large
<a href="#">Pine Moraines and Outwash Plains</a>	Forest-Upland Coniferous (Red-white pine), Shrub/Woodland-Upland (Jackpine woodland), Wetland-Nonforest, River-Headwater to Large
<a href="#">St. Louis Moraines</a>	Forest-Upland Coniferous (Red-white pine), Lake-deep, River-Headwater to Large
<a href="#">Tamarac Lowlands</a>	Forest-Upland Coniferous (Red-white pine), Forest-Lowland Coniferous, Wetland-Nonforest, River-Headwater to Large
<a href="#">Mille Lacs Uplands</a>	Forest-Lowland Coniferous, Forest-Upland Deciduous (Mixed hardwood-pine), Wetland-Nonforest, Lake-Deep, Forest-Upland Coniferous, Shrub/Woodland-Upland (Jack pine woodland), Shoreline-dunes-cliff/talus, River-Headwater to Large, River-Very Large (St. Croix River)
<a href="#">Glacial Lake Superior Plain</a>	Forest-Upland Deciduous (Aspen), Forest-Upland Coniferous (Pine flats), Forest-Upland Deciduous (Mixed hardwood-pine), River-Headwater to Large

**While we acknowledge that avoidance of all key habitats is not realistic, we do recommend that key habitats are avoided to the extent practicable. The information in this section should be used in future environmental review documents in describing the existing environment/ecological setting (ecological subsection descriptions) and impacts to key habitats.** NPC shapefiles can be a useful planning tool when used in combination with project shapefiles and key habitat descriptions (which include NPC crosswalks). As with the Areas of Biodiversity Significance, coverage for NPC is incomplete or preliminary for Clearwater, Beltrami, Hubbard, Cass, Itasca, and Aitkin counties. Likewise, **the DNR Endangered Species Review Coordinator should be contacted at the number provided above for obtaining preliminary shapefiles for areas for data exists.** To crosswalk the native plant communities to their corresponding key habitats (if applicable), refer to Appendix B of this guide or go to [http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/key\\_habitat\\_by\\_subsection.pdf](http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/key_habitat_by_subsection.pdf).

#### Specific Route Avoidance Comments

Following are specific route adjustment recommendations. DNR will likely have additional recommendations as the project is further developed/refined and as part of forthcoming environmental review and permitting.

- Shell River (Hubbard County) - Based on aerial photography, it appears there have been two corridors that have been used in the past near the Twin Lakes/Hinds Lake. From the standpoint of minimizing the number of crossings (and in absence of other factors unknown at this time), using the southern corridor of disturbance is preferred as it would cross one less tributary.
- Aitkin County - Based on aerial photography and other information, cutting east just south of the Moose River WMA (using the existing corridor of disturbance associated with a 250kV power line) would avoid Grayling Marsh WMA, McGregor WMA, Lawler WMA, and Salo Marsh WMA. DNR recommends the impacts and feasibility of this route be further assessed.

### Conclusion

Accommodating DNR recommendations through route planning will help to minimize potential impacts to wildlife, forestry, habitats, and recreation as well as facilitate permitting.

This review constitutes an office review only and is not a substitute for field review. The DNR may have comments that are more specific after more project details are known. The DNR looks forward to working with you on this project to assist in meeting project goals while protecting Minnesota's natural resources. Please contact myself directly at (218)-308-2672 or Rian Reed at (218)-999-7826 if you have any questions.

Sincerely,



Nathan Kestner  
NW Regional Environmental Assessment Ecologist  
Division of Ecological and Water Resources

cc: Jamie Schrenzel, DNR  
Lisa Joyal, DNR  
Rian Reed, DNR  
Cindy Buttleman, DNR  
Joe Rokala, DNR  
Deb Pile, EFP

Figure 2.3.3-1  
Northern Route Alternative

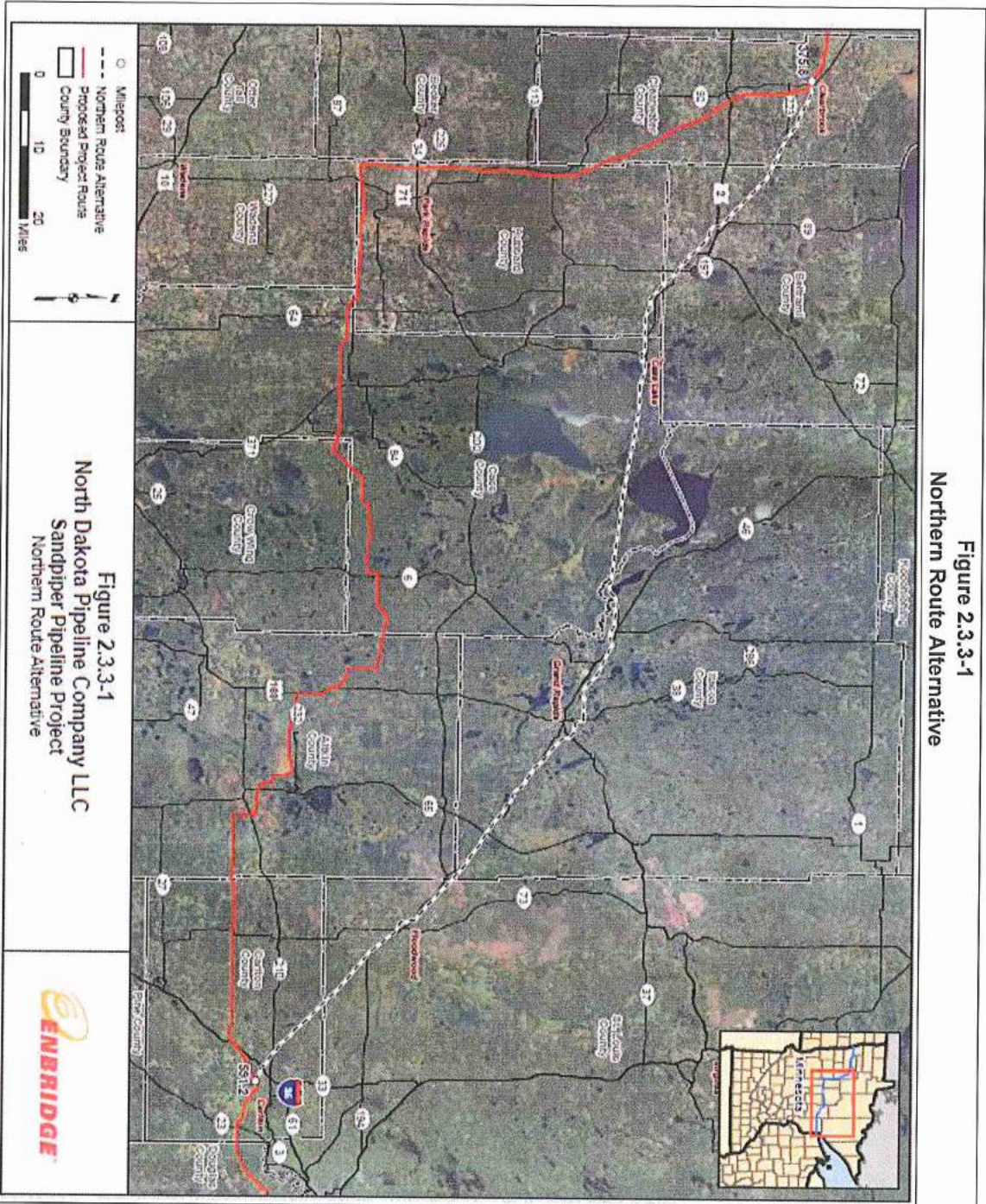


Figure 2.3.3-1  
North Dakota Pipeline Company LLC  
Sandpiper Pipeline Project  
Northern Route Alternative

Figure 2.3.3-2  
Aitkin County Powerline Route Alternative

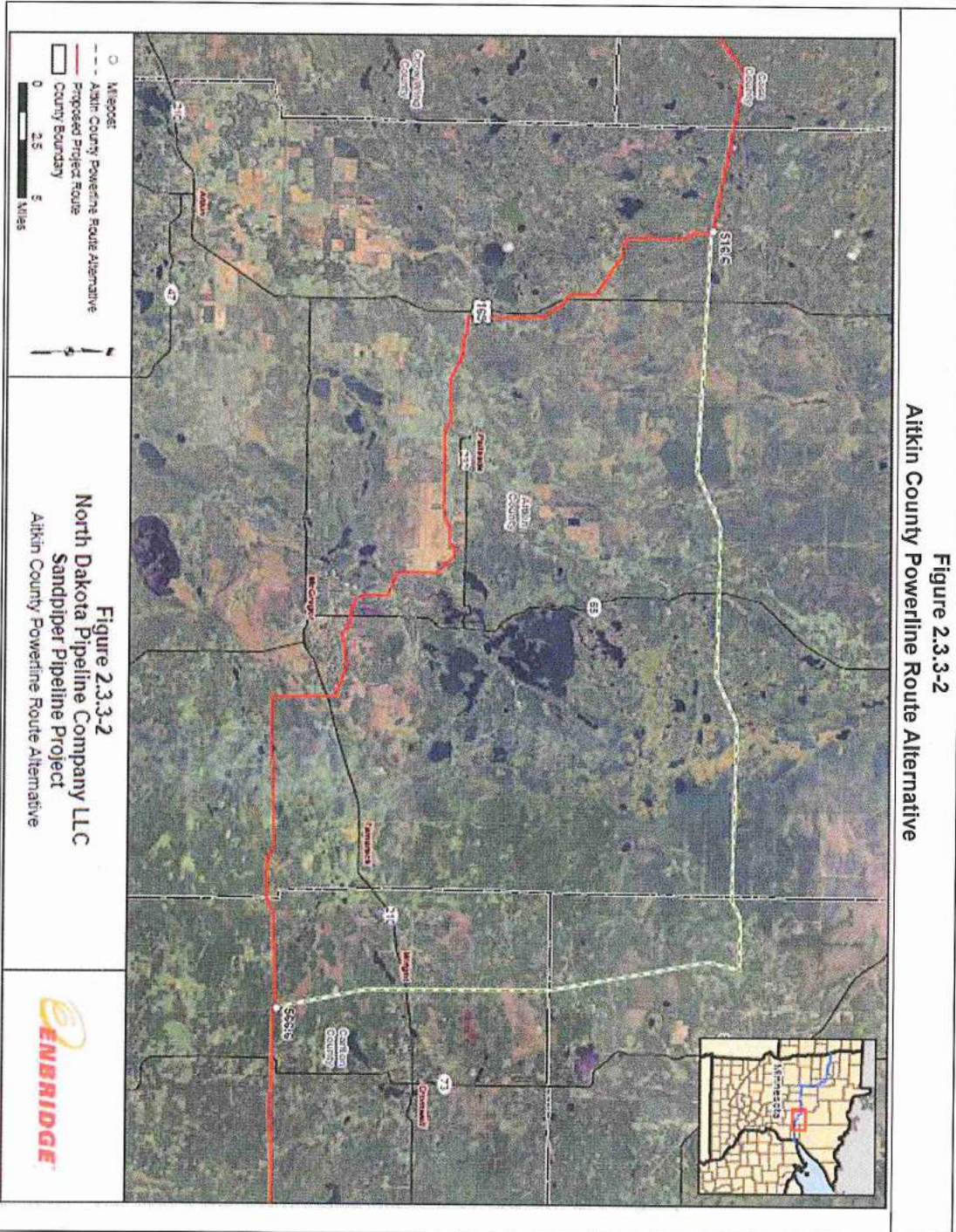


Figure 2.3.3-2  
North Dakota Pipeline Company LLC  
Sandpiper Pipeline Project  
Aitkin County Powerline Route Alternative



Minnesota Department of Natural Resources  
Division of Ecological and Water Resources  
2115 Birchmont Beach Rd NE  
Bemidji, MN 56601  
218-308-2672



August 14, 2013

Sara Ploetz  
Environmental Analysis II  
Enbridge Pipelines (North Dakota) LLC  
1409 Hammond Ave  
Superior, WI 54880

Re: Enbridge Sandpiper Pipeline Project – DNR Early Coordination Review

Dear Ms. Ploetz,

The Minnesota Department of Natural Resources (DNR) has received information concerning the above referenced pipeline project proposal. Based on the information provided to date, we understand that Enbridge Pipelines (North Dakota) LLC (Enbridge) is proposing to build a new pipeline that will begin at Enbridge's Beaver Lodge station south of Tioga, North Dakota to Clearbrook, Minnesota and will continue to Enbridge's terminal in Superior, Wisconsin. The project will transport growing supplies of North Dakota crude petroleum to Superior terminal and then connect to various other pipelines, eventually providing refineries in the Midwest and eastern Canada with crude oil. In Minnesota, the Sandpiper southern/preferred route would cross portions of Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties. The northern route would cross portions of Polk, Red Lake, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, and Carlton Counties.

Information provided for review includes electronic shapefiles for two approximately two-mile width route corridors which extend across the above mentioned counties. In recent conversations with Enbridge staff we learned that Enbridge does not view the northern route as a viable route and therefore is not expending further resources exploring it (July 30<sup>th</sup> personal communication with Sara Ploetz). Further we understand that all current efforts are focused on the southern route as the preferred route. We also understand that the Public Utilities Commission (PUC) Pipeline routing Application will include rationale for rejection of the routing alternatives. Based on this conversation, and in the interests of efficiency; DNR comments for the southern route are more extensive and based on both a desktop GIS review and interdisciplinary comments from DNR staff (information on the northern route based on a desktop review).

The DNR is providing this **early coordination preliminary review** as a mechanism to collaboratively work together to identify and avoid potential impacts to natural resources found within the project area (see DNR July 2<sup>nd</sup> letter for an explanation of DNR review activities associated with pipeline projects). This review specifically describes:

- I. DNR's regulatory role and permitting information,
- II. General pipeline impacts, and
- III. State administered lands and high value resources within the pipeline route corridors.

DNR recommendations (and in some cases directives) are included throughout this review and for emphasis, are in **"bold"** text.

## I. DNR Regulatory Role and Permitting Information

The DNR has jurisdiction over wildlife in Minnesota and administers the Minnesota Outdoor Recreation System (MINN. STAT. § 86A and § 84.027, subd. 2). The Minnesota Outdoor Recreation System managed by the DNR includes: Wildlife Management Areas, Scientific and Natural Areas, State Parks, State Forests, State Recreation Areas, and other DNR managed lands. The DNR reviews and comments on projects in order to meet statutory obligations that have been developed to ensure natural, recreational, and cultural resources are protected for the enjoyment of all residents of Minnesota and our visitors.

Project developers intending to cross over, under, or across any state land or public water with any utility (pipelines, power lines, etc.) need to first secure a DNR license to cross (Minnesota Statute 84.415). Information on how to obtain a License for Utility can be found at [http://www.dnr.state.mn.us/permits/utility\\_crossing/index.html](http://www.dnr.state.mn.us/permits/utility_crossing/index.html). DNR Division of Lands and Minerals (LAM) coordinates DNR staff license reviews and issues utility licenses to cross public waters and state lands managed by the DNR. For large linear projects such as pipelines, DNR requires application for and typically issues, one comprehensive land crossing license and one comprehensive public water crossing license for each phase. It is important to allow adequate time for all license review components. For example, crossing of state lands that were acquired with funding restrictions usually requires additional review time. Please use the link above or call DNR LAM at 218-308-2627 (northwest region) or 218-999-7894 (northeast region) as soon as possible to identify all requirements.

Many times pipeline projects require dewatering during construction. A water use (appropriation) permit from DNR Waters is required for all users withdrawing more than 10,000 gallons of water per day or 1 million gallons per year. Additional information about DNR water use permits is available at [http://www.dnr.state.mn.us/waters/watermgmt\\_section/appropriations/permits.html](http://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/permits.html)

Significant wetland acreage is present within the project boundary. Activities that impact wetlands many times involve overlapping local, state and federal regulations. Information about wetland regulation in Minnesota (along with regulator contact information) is available at <http://www.bwsr.state.mn.us/wetlands/regulation.html>.

Calcareous fens are rare and distinctive peat accumulating wetlands which have additional legal protected in Minnesota. Calcareous fens are designated as “outstanding resource value waters” in water quality regulations administered by the MPCA (Minnesota Rules part 7050.0180) and they are given special protection through Minnesota Rules part 8420.1010 - 8240.1060. The Wetlands Conservation Act (WCA), authorized by Minnesota Statutes 103G.223, states that calcareous fens may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, except as provided for in a management plan (i.e. Fen Management Plan [FMP]) approved by the Commissioner of the Department of Natural Resources.

Many of the unique characteristics of calcareous fens result from the upwelling of groundwater through calcareous substrates. Because of their dependence on delicate groundwater hydrology, calcareous fens can be indirectly affected by activities several miles away from the fen.

In addition to the protection afforded by the WCA, destruction of any state-threatened plants occurring on a calcareous fen may be regulated under Minnesota’s endangered species law (MINN. STAT. § 84.0895). For additional information, see the DNR website at: <http://www.dnr.state.mn.us/ets/index.html>.

## II. General Pipeline Impacts

### General Comments:

DNR seeks to avoid, minimize all potential impacts and may also seek compensatory mitigation for unavoidable impacts. Potential environmental impacts from pipeline construction and operation include but are not limited to:

- **Geology and soils:** Pipelines may cross through areas of unstable soils, steep or rocky terrain, or bedrock. Erosion and sedimentation are concerns, along with the mixing of soil horizons. Fuel and hydraulic fluid contamination of soils during construction is a very real possibility, and a break in a functioning pipeline can quickly contaminate a large area.
- **Public lands:** The crossing of public lands can affect natural communities, habitat, and the quality of recreational experiences. Parcels, such as wildlife management areas and waterfowl production areas, usually can be avoided.
- **Vegetation:** Clearing the right-of-way and work areas of vegetation can have short-term and long-term consequences (habitat loss, degradation, and fragmentation). High quality, high value natural communities, wetlands, and other large blocks of habitats should be avoided.
- **Wildlife:** Pipeline construction results in the loss and fragmentation of wildlife habitat. The pipelines themselves do not impair the movement of species along migration corridors. Cleared and maintained rights-of-way, however, create barriers to movement for many species, give advantage to predators, and encourage the spread of invasive species. Special wildlife areas, such as rookeries, wildlife management areas, scientific and natural areas, prairie bank easements, areas of biodiversity significance, and key habitats for species of greatest conservation need (SGCN) should be avoided.
- **Fisheries:** Pipelines cross perennial and intermittent streams, cold water and warm water streams, and designated trout streams; and may affect high quality or high value fisheries (e.g. trout streams). Erosion and sedimentation, resulting from construction activities, impair water quality and aquatic habitats. Close attention needs to be paid to the crossing techniques to be used. DNR utility licenses to cross public waters may require specific crossing methods.
- **Ground and surface water:** Fuel and hydraulic spills, which are common on pipeline construction projects, have potential to contaminate ground and surface waters. While environmental review is typically focused on pipeline construction, the pipeline will remain a potential hazard throughout its useful life. Out of sight, breaks in the line can go unnoticed until the pipe's contents rise to the surface or emerge in waterways.

## III. State Administered Lands & High Value Resources within the Pipeline Route Corridors

Numerous state parcels, public waters, and other high value resources occur throughout the project corridor provided. Shapefiles for many of the lands and high value resources listed below are available from for free download from the DNR Data Deli at <http://deli.dnr.state.mn.us/>. **DNR expects that potential impacts to all resources discussed in early coordination documents be fully assessed as part of forthcoming formal environmental review.** Following is a list of high value resources within the pipeline corridor provided for review along with recommendations for avoiding potential impacts.

## State Administered Lands

Crossing of public lands can affect natural communities, habitat, and the quality of recreational experiences and in some cases conflict with the purposes for which certain areas were established. State, federal, and non-profit conservation groups have expended a considerable amount of time and money to acquire and manage these properties. Likewise, it is the DNR's preference to avoid, when possible, all potential adverse impacts to DNR administered lands. Shapefiles for all of the state managed lands included below are available through the DNR data deli. As part of any DNR license or approval associated with state administered lands, DNR will require that access to those lands be maintained at all times (i.e. survey work, during and after construction, etc.).

At the time of this review, temporary access permits are being applied for by Enbridge to gather data in close proximity the preferred route alignment. Please note that allowing access and data collection in these areas by no means is considered tacit approval by DNR.

### Minerals

For the preferred route, the footprint for the pipeline study area intersects 3,083 state-owned parcels (trust, tax forfeit, con-con etc.), and also intersects an additional 1,300 parcels where the State owns a mineral interest but not the surface. This analysis has not been conducted for the north route, however; it is likely that similar mineral resources exist along that alignment.

There is significant active metallic mineral exploration activity taking place in the vicinity of the Aitkin-Carlton County boundary. State metallic mineral leases have been issued for most of the state-owned mineral interests in the Tamarack area, covering townships T48N-R22W and T49N-R22W in Aitkin County, and also the northwest quarter of Township T47N-R21W and southwest quarter of T48N-R21W in Carlton County. Paragraph 5 of the State's metallic mineral lease form (MN Rules 6125.0700) requires that the mineral lessee be consulted prior to issuance of any other surface leases, permits or licenses, and such leases, permits or licenses shall not unduly interfere with the exploration or mining operations conducted on the leased mining units. The study area route intersects active leases involving School Trust, State Acquired, Consolidated-Conservation, and Tax-Forfeit mineral rights. **DNR recommends that the project proposer (Enbridge), mineral owner (State), and mineral lessee (Kennecott Exploration Company) meet to determine if potential conflicts may exist where the study route intersects the active lease area. Additionally, Aitkin and Carlton County Land Departments administer the surface of Tax-Forfeit lands in their respective Counties, including many surface parcels where active state mineral leases are in effect. It will be important to consult with the County tax-forfeit surface administrators so that they are informed and aware of mineral lease implications for the tax-forfeit surface estate in the area.**

Kennecott Exploration Company holds the following state metallic mineral leases that intersect the study route:

T48N-R22W, Sections 31-36: leases MM9774P, MM10327 thru MM10331

T48N-R21W, Sections 31-33: leases MM9810, MM9811, MM9854N, MM9855N, and MM9856N

T47N-R21W, Sections 4-8: leases MM10176, MM9805, MM9806, MM10124N, MM10125N

### Other Mineral Estate Mineral Resources (iron and nonferrous metallic minerals)

Along most of the study route, metallic mineral resources are avoided. The study route successfully avoids known iron resources of the Mesabi, Cuyuna and Emily iron districts. The study route crosses two bedrock greenstone belt terranes in the western half of Minnesota. While these bedrock belts may attract mineral exploration activity at some future date, they are relatively unexplored at present due to thickness of overlying glacial materials. There are no presently known mineral resources along the western half of the study route. The study route also passes through an area in central Carlton County that has



experienced repeated episodes of metallic mineral exploration (where the study route passes through Ranges 18W and 19W).

Surface Estate Mineral Resources (aggregate, crushed stone, peat, etc.)

**Where surface estate mineral resources exist, compensation would be required for any encumbrance that precludes extraction activities due to the presence of the pipeline.** Features such as the pipeline, associated setback and sloping requirements, areas of infrastructure, permanent access roads, etc. that encumber surface estate mineral resources would be evaluated (at proposer expense) at the time the route is finalized.

Peatland SNA's

There are approximately 6 million acres of "peatlands" in Minnesota; lands where the underlying substrate consists primarily of peat organic soils. Some of these peatlands are of world-wide significance, and contain some of Minnesota's last true wilderness. Acre upon acre of spruce, tamarack and sedge fens and wetlands exist here with little penetration by roads or human habitation. In 1978, the Minnesota DNR began evaluating the peatlands of Minnesota. As a result of this early effort, all of Minnesota's 6 million acres were evaluated as to their ecological significance, and recommendations were made to identify the most fragile and unique of all of the peatland acres in the state.

A report entitled [Recommendations for the Protection of Ecologically Significant Peatlands in Minnesota PDF](#) (5.9 Mb) was published in 1984. Eighteen ecologically significant peatlands were identified in this report.

Legislation passed in 1991 included the [Peatland Protection Act](#). In this legislation, each of the 18 peatlands identified in the 1984 report were given SNA status. While SNA's in general are afforded the greatest protection relative to other state managed lands; Peatland SNA's differ from other SNA's in that there are additional regulations regarding activities on peatland SNA's. **Construction of new corridors of disturbance associated with pipelines through Peatland SNA's is a prohibited activity** [[MN Statutes 84.035 Subd5\(a\)5](#)].

Following is a list of Peatland SNA's within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route	
N/A	
Northern Route	
Wawina Peatland SNA	

Wildlife Management Areas (WMA's)

As provided by Minnesota Statutes, section 86A.05, WMA's are established, "*to protect those lands and waters which have a high potential for wildlife production and to develop and manage these lands and waters for the production of wildlife, for public hunting, fishing, and trapping, and for other compatible outdoor recreational uses*".

Following is a list of Wildlife Management Areas (WMA's) within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route	
Polk WMA	McGregor WMA
Timber Doodle WMA	Grayling Marsh WMA*
Lesser WMA	Lawler WMA*
Enerson WMA	Upper Rice WMA
Mud Lake WMA	Salo marsh WMA*

Lowe WMA	
Crow Wing Chain WMA*	
Northern Route	
Lessor WMA	Polk WMA
Enerson WMA	Timber Doodle WMA
Polk WMA	West Four Legged Lake WMA
Bemidji Slough WMA	Swan River Deer Yard WMA

\*Crossing appears unavoidable based on corridor provided

#### Aquatic Management Areas (AMA's)

As provided by Minnesota Statutes, section 86A.05, AMA's are established, "to protect, develop, and manage lakes, rivers, streams, and adjacent wetlands and lands that are critical for fish and other aquatic life, for water quality, and for their intrinsic biological value, public fishing, or other compatible outdoor recreational uses".

Following is a list of AMA's within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route	
La Salle Creek AMA	Spire Lake Hatchery AMA
Straight River AMA	Blackhoof River AMA
Snowshoe Lake AMA	
Northern Route	
Clearwater River AMA	Grace Lake AMA
Necktie River AMA	Prairie River AMA
Blackberry Lake AMA	Bruce Creek AMA
Ahmik Reek AMA	Otter Creek AMA
Little Otter Creek AMA	

\*Note – Some of the AMAs listed above are also included below as state conservation easements.

#### State Conservation Easements (MS Chapter 84C)

As provided by Minnesota Statutes, section 86C.01, conservation easements refer to, "nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property".

Following is a list of conservation easements within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Straight River Trout Stream Easements (Hubbard County)
Shell River Conservation Easement (T139N, R35W, S20)
Northern Route
Clearwater River Trout Stream Easements (Beltrami County)
Necktie River Trout Stream Easements (Hubbard County)
Little Otter Creek Trout Stream Easement (Carlton County)

### Prairie Bank Easements

Following is a list of the prairie bank easements within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Lake Pleasant Prairie Bank Easement
Northern Route
N/A

### State Parks

As provided by Minnesota Statutes, section 86A.05, state parks are established, “*to protect and perpetuate extensive areas of the state possessing resources which illustrate and exemplify Minnesota's natural phenomena and to provide for the use, enjoyment, and understanding of such resources without impairment for the enjoyment and recreation of future generations*”.

Following is a list of state parks within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Itasca State Park
Jay Cooke State Park
Northern Route
Jay Cooke State Park

### State Recreation Areas (SRAs)

As provided by Minnesota Statutes, section 86A.05, SRA’s are established, “*to provide a broad selection of outdoor recreation opportunities in a natural setting which may be used by large numbers of people*”.

Following is a list of SRA’s within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
LaSalle lake SRA
Northern Route
N/A

### State Forests

As provided by Minnesota Statutes, section 86A.05, state forests are established, “*...for growing, managing, and harvesting timber and other forest crops and for the establishment and development of recreational areas and for the protection of watershed areas, and the preservation and development of rare and distinctive species of flora native to such areas...*”.

Following is a list of state forests within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
White Earth State Forest
Mississippi Headwaters State Forest
Huntersville State Forest
Foothills State Forest
Land O’ Lakes State Forest
Hill River State forest

Waukenabo State forest
Savanna State Forest
Fond Du Lac State Forest
Northern Route
Mississippi Headwaters State Forest
Bowstring State Forest
Savanna State Forest
Fond Du Lac State Forest

#### DNR Division of Forestry Administered Lands/School Trust Fund lands

Many state land parcels administered by DNR Division of Forestry are situated within the projects corridors. These areas are some of the most productive forestry lands in the state and pipeline construction through them (and maintenance) would be detrimental to future revenues. Routes passing through School Trust Lands must produce maximum long term economic return for the Trust. Normal reimbursement for existing timber would be common to all forest lands but land types (School trust, Con-Con, etc.) will impact specific compensation and there may be variability that will need to be determined.

#### State Trails

As provided by Minnesota Statutes, section 86A.05, state trails are established “to provide a recreational travel route which connects units of the outdoor recreation system or the national trail system, provides access to or passage through other areas which have significant scenic, historic, scientific, or recreational qualities or reestablishes or permits travel along an historically prominent travel route or which provides commuter transportation”.

Following is a list of state trails within or in close proximity to the area under consideration for pipeline development:

Southern/Preferred Route
Willard Munger State Trail (2 crossings) – Carlton County
Paul Bunyan State Trail – Cass County
Red River of the North Water Trail
Mississippi River Water Trail (2 crossing s)
Red lake River Water Trail (2 crossings)
Crow Wing River Water Trail
Pine River Water Trail
Northern Route
Mississippi River Water Trail (2 crossing s)
Paul Bunyan State Trail – Beltrami, Hubbard
Heartland State Trail - Cass
Taconite state Trail - Itasca
Willard Munger State Trail (2 crossings) – Carlton County

DNR understands that pipeline projects crossing rivers many times require use of temporary bridges and crossings of trails require detours. Temporary bridges and other trail obstacles that are kept in place during the construction period will be obstacles to such traffic, and perhaps at times involve safety issues.

Other public and non-profit lands such U.S. Fish and Wildlife Waterfowl Productions Areas (WPA), National Wildlife Refuges and The Nature Conservancy (TNC) lands occur in the area. The land managers for these areas should be contacted individually for their respective requirements and recommendations.

**Pipeline construction through areas has the potential to conflict with the purposes for which they areas were established (purposes for establishment stated above). Likewise, it is the DNR's preference to avoid, when possible, potential adverse impacts to DNR administered lands.**

### **Other High Value Resources**

#### Trout Streams

Many trout streams occur within the project corridor provided for review. For the preferred route it appears that six trout stream crossings may be unavoidable (many more within corridor). For the northern route it appears that three would be difficult to avoid crossing. A GIS shapefile showing legally designated trout streams and trout stream tributaries (as identified in Minnesota Rules Chapter 6264) is available through the DNR data deli.

**DNR recommends avoidance of all trout water crossings when practical. Due to the sensitive nature of these special waters, be advised that information needs and crossing requirements through these areas will be greater. We also recommend exploring the feasibility of incorporating shut-off valves in close proximity to trout stream crossings to minimize impacts in the event of a failure.**

#### Calcareous Fens

The DNR maintains a list of known calcareous fens, which is available at the DNR's website at: <http://www.dnr.state.mn.us/eco/wetlands.html>. Based on the most current list, one calcareous fens occurs both within and in close proximity to the route corridor provided.

Calc Fen Name	Location (TRS)
Clearbrook Fen	149N037W - 17

The DNR data deli includes a point shapefile (nhis\_mnfent3) which represents the official list of calcareous fens, however; calcareous fens are also included in the Rare Features Data and in the MBS Native Plant Communities data set. The point file is a screening tool only and the MBS Native Plant Communities (NPC) is a polygon shapefile that include delineated calcareous fens. Some fens are so small that they may not show up on the MBS NPC shapefile. All identified calcareous fens, whether on the official list or not, are included in the Rare Features data provided by the Endangered Species review Coordinator. There are likely many yet to be identified calcareous fens in MN. Likewise **it is important that staff providing wetland delineation and species surveys have the proper training and ability to identify calcareous fens and rare species.** This will be especially important in the beach ridge areas associated with historic Lake Aggasiz (i.e. Polk, Red Lake and Clearwater Counties).

**Due to the unique characteristics of these resources and difficulty in approving impacts, DNR recommends that avoidance of impacts to calcareous fens be given high priority. Please contact DNR Regional Groundwater Specialist Michelle Walker at 218-308-2664 for questions about calcareous fens and FMP requirements.**

#### Public Waters

Numerous public water courses, public waters basins and public water wetland occurred throughout the route corridor provided. Since many of the watercourses extend across the entire corridor, crossings will likely be unavoidable, however; minimizing the number of crossing is possible. Avoiding and minimizing public water crossing will help to avoid potential impacts to water quality and fish and wildlife habitat.

Since it would be inefficient to list all public waters in the project area; **DNR recommends that Public Waters shapefiles be download from to data deli (link provided above) and used during route planning to avoid and minimize water crossings to the extent possible.**

**As part of future environmental review and permitting documents, DNR expects Enbridge to adaptively manage crossing proposals based on lessons learned from recent past projects.** In deciding specific crossing requirements, DNR will also take into consideration lessons learned on past projects. For example, situations which were problematic in the past due to various factors such as significant bank slumping, flowing soils, frac-outs, etc. will be treated differently as to: what types of crossings will be considered (trenching, directional drilling, etc.), pre and post construction survey requirements, restoration requirements, long-term monitoring, and potentially mitigation requirements for crossings that don't go according to plans. In order to maximize habitat function and to help maintain the natural character, DNR prefers use of natural restoration methods and/or bio-engineering when practical.

**In order to inform specific crossing requirements and minimize the potential impacts for impacts to public waters, DNR may require more detailed geological and waters survey information in proximity to more sensitive public water crossing.** As part of their review process DNR lands and Minerals will solicit input from area staff both general and specific comments on the many public waters crossings.

#### Wetlands

Considerable wetlands occur throughout the project corridor. The alteration most commonly encountered with pipelines is - through disturbance and an inability to re-establish pre-existing wetland vegetation – a conversion in wetland type to a deeper water habitat. As an area becomes wetter, the first effects on vegetation of increased saturation include the invasion of species more characteristic of marshes. Many times these are invasive species such as hybrid cattail that form monotypic stand with limited habitats value. The result can be a significant modification or loss of ecological function and biodiversity.

**DNR recommends avoidance and minimization of crossings. Where crossings are needed, winter construction is preferred to minimize wetland impacts due to construction.** This is especially important in sensitive and difficult to restore wetlands such as bogs and fens.

The WCA exempts impacts for pipelines projects only **IF:** impacts have been avoided and minimized to extent possible (usually not a problem to demonstrate), **AND** the project (cannot be split into components to meet an exemption) significantly modifies or alters (notice it does not say impacts) less than .5 acres of wetland. Upon review of recent air photos along the most recent Enbridge pipeline project expansion corridor (alterations specific to most recent work) one will observe significant wetland modification and alteration which exceeds .5 acres. Furthermore, **the need to provide and maintain access to properties (public and private lands) and the project corridor usually results in additional wetland impacts. Such impacts should be estimated and included as part of the project.**

DNR has begun coordination with the MN Board of Water and Soil Resources (BWSR) and the Army Corps of Engineers in regards to wetland impacts due to pipeline construction and mitigation needs.

Another consideration is the projects potential to impact easements associated with wetland mitigation sites. **DNR recommends contacting the BWSR to obtain locations of wetland mitigation easements throughout the project corridors.**

#### Large Block Habitats

Large blocks of habitat and habitat complexes (grassland, wetlands, or forest) can provide an increased diversity and abundance of wildlife. A large block of habitat is a function of increased acres and shape of the patch. Larger rounder or square blocks provide interior habitat that is more isolated from noise, pollution, parasitic birds, and predators associated with edges of fragmented habitat. Habitat complexes consist of a combination of various resources, which may not be significant on their own, but form a habitat complex or mosaic, that concentrates wildlife. Area sensitive species require large blocks of intact and contiguous habitat in order to successfully reproduce. Direct habitat loss, habitat degradation, and fragmentation can occur when locating pipelines across large blocks of habitat and habitat complexes.

While not as abundant as other parts of the state, large block habitats consisting of wetlands, grasslands and forested areas do occur throughout the project area. Many of these are also native plant communities, areas of biodiversity significance, and key habitats for SGCN.

**DNR recommends that, to the extent feasible, the project avoid fragmenting large contiguous block of habitat of 40 or more acres.**

#### Rare Species

Information contained in this section is not a surrogate for information provided by DNR Natural Heritage and Nongame Research Program staff. We understand that you have begun coordination with the DNR Endangered Species Coordinator in regards to receiving the most recent rare species information and survey requirements. **All questions about rare species and associated requirements should continue to be directed to Endangered Species Review Coordinator at 651-259-5109.**

Minnesota endangered species law (Minnesota Statutes Section 84.0895) and associated rules (Minnesota Rules Part 6212.1800 to 6212.2300 and 6134) prohibit the taking of endangered or threatened species without a permit. Surveys may be required in order to determine if takings may occur. **Project planning should take into account that some species can only be surveyed at specific times of the year.**

#### Areas of Biodiversity Significance and Native Plant Communities (NPC's)

At the conclusion of work in a geographic region, Minnesota Biological Survey (MBS) ecologists assign a biodiversity significance rank to each survey site. A site's biodiversity significance rank is based on the presence of rare species populations, the size and condition of *native plant communities* (NPCs) within the site, and the landscape context of the site (for example, whether the site is isolated in a landscape dominated by cropland or developed land, or whether it is connected or close to other areas with intact native plant communities). These ranks are used to communicate the statewide native biological diversity significance of each site to natural resource professionals, state and local government officials, and the public.

The biodiversity ranks help to guide conservation and management. The Minnesota Biological Survey (MBS) has identified many Sites of Biodiversity Significance within and adjacent to the proposed project corridor. Since coverage is not continuous across the projects corridors, a comparative analysis is not provided as part of this review.

GIS shapefiles of MBS Sites of Biodiversity Significance and Native Plant Communities can be downloaded from the DNR Data Deli, however; MBS data for Clearwater County, Beltrami, Hubbard, Cass, Itasca, and Aitkin counties are not yet complete and/or publically available through the DNR data deli. **The DNR Endangered Species Review Coordinator should be contacted at the number provided above for obtaining preliminary shapefiles for areas for which data exists.**

**We encourage you to consider a project route and alignment alternatives that would avoid direct impacts to Areas of Biodiversity Significance and Native Plant Communities (NPC's). For unavoidable impacts, we recommend impact minimization. In addition, Best Management Practices should be implemented in order to minimize indirect impacts such as the introduction or spread of invasive plant species.**

#### Rare Natural Plant Communities

Permanent impacts to rare natural communities are not allowed by the Wetland Conservation Act (WCA) ([MN Rule 8420.0515 Subp. 3](#)). Rare natural communities under WCA are defined as:

*“Native plant communities (NPCs) having a conservation status rank of S1, S2, or S3 that are mapped or determined by the DNR to be eligible for mapping in the Natural Heritage Information System; or*

*any native plant community that is contained within an area mapped or determined by the MBS to be eligible for mapping in the Natural Heritage Information System as having an Outstanding or High biodiversity significance ranking.” See [http://www.bwsr.state.mn.us/wetlands/wca/guidance/Rare\\_natural\\_communities.pdf](http://www.bwsr.state.mn.us/wetlands/wca/guidance/Rare_natural_communities.pdf).*

**DNR recommends that disturbance to rare natural plant communities be avoided.** A crosswalk between NPCS and associated conservation status ranks is available at [http://files.dnr.state.mn.us/natural\\_resources/npc/s\\_ranks\\_npc\\_types\\_&\\_subtypes.pdf](http://files.dnr.state.mn.us/natural_resources/npc/s_ranks_npc_types_&_subtypes.pdf)

As mentioned above, the project will have impacts to NPC’s that qualify as “rare natural communities” under the WCA. The local government unit (LGU) is responsible for determining whether permanent impacts to rare natural communities will occur and whether proposed actions qualify for exemptions. In most cases the LGU is either the County or the County SWCD. For state lands, MNDNR is the WCA LGU. **The applicant should be sure to contact all LGUs to begin coordination for WCA compliance.**

Old Growth Forests, Ecologically Important Lowland Conifers (EILCs), Representative Sample Areas (RSA), and High Conservation Value Forests (HCVF’s)

**DNR recommends avoidance of all old growth special management zones (330’ surrounding the old growth perimeter), RSA’s, EILCs, and HCVFs.** For more information about these sensitive forest resources, please contact NE Regional Plant Ecologist / MCBS Botanist, Bruce Carlson at 218-723-4763 or email at [bruce.carlson@state.mn.us](mailto:bruce.carlson@state.mn.us).

Species of Greatest Conservation Need (SGCN) and Key Habitats

Every state recently completed a "state wildlife action plan (SWAP)" which identifies conservation needs, actions and priorities for species of concern, including threatened and endangered wildlife and other important wildlife species. Much of the species documentation within Minnesota’s SWAP is provided by the MBS. Minnesota's SWAP titled, "*Tomorrow's Habitat for the Wild and Rare*" describes conservation concerns for species of greatest conservation need (SGCN) and their *key habitats* within various landscape settings (characterized using the Ecological Classification System [ECS]).

SGCN are defined as species whose populations are rare, declining, or vulnerable to decline and are below levels desirable to ensure long-term health and stability (includes threatened and endangered species). *Key habitats* are defined as the habitats most important to the greatest number of SGCN. Key habitats are specific to individual ecological subsections and are not found everywhere in the state.

The MDNR and the U.S. Forest Service developed the ECS for ecological mapping and landscape classification following the National Hierarchical Framework of Ecological Units (Ecomap 1993). ECS mapping enables resource managers to consider ecological patterns for areas as large as North America or as small as a single timber stand and identify areas with similar management opportunities or constraints relative to that scale. There are eight levels of ECS units in the United States. Map units for six of these levels occur in Minnesota: Provinces, Sections, Subsections, Land Type Associations, Land Types, and Land Type Phases. The project corridor provided crosses three of Minnesota’s four Ecological Provinces (Prairie Parkland, Tallgrass Aspen Parkland, and Eastern Broadleaf Forest). These Provinces include three (26 total in MN) respective Ecological Subsections (i.e. Red River Prairie, Aspen Parklands, and Hardwood Hills).

Subsection profiles (which includes conservation actions and priorities) are available at <http://www.dnr.state.mn.us/ecs/index.html>. GIS shapefiles for subsections are also available through the DNR data deli.

Minnesota’s SWAP identifies 292 SGCN in the state. Each of the species was evaluated to determine the factors influencing their rarity, vulnerability, or decline. The results of the species analysis indicated that habitat loss and degradation are the most significant challenges facing Minnesota’s SGCN. A copy of



Minnesota's SWAP is available online at

[http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/chapters\\_appendix/tomorrows\\_habitat\\_toc.pdf](http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/chapters_appendix/tomorrows_habitat_toc.pdf).

Pipeline construction and ongoing maintenance has the potential to directly and indirectly affect key habitats and the SGCN that use them. Identified key habitats within subsections mentioned above are provided in the following table:

Ecological Subsection	Key Habitats
<a href="#">Red River Prairie</a>	Prairie, Forest-Lowland Deciduous, Wetland-Nonforest, River-Headwater to large, River-Very Large (Red River)
<a href="#">Aspen Parklands</a>	Shrub/Woodland-Upland (Brush prairie), Wetland-Nonforest (Wet prairie), grasslands, lake-shallow, River-Headwater to Large
<a href="#">Hardwood Hills</a>	Forest-Upland Deciduous (aspen-oak), Forest-Upland Deciduous (Hardwood), Shrub/Woodland-Upland (Oak savanna, Brush prairie), Prairie, Wetland-Nonforest, Grassland, Lake-Shallow, River-Headwater to large
<a href="#">Chippewa Plains</a>	Forest-Upland Coniferous, Shrub/Woodland-Upland (Jackpine woodland), Wetland-Nonforest, River-Headwater to Large
<a href="#">Pine Moraines and Outwash Plains</a>	Forest-Upland Coniferous (Red-white pine), Shrub/Woodland-Upland (Jackpine woodland), Wetland-Nonforest, River-Headwater to Large
<a href="#">St. Louis Moraines</a>	Forest-Upland Coniferous (Red-white pine), Lake-deep, River-Headwater to Large
<a href="#">Tamarac Lowlands</a>	Forest-Upland Coniferous (Red-white pine), Forest-Lowland Coniferous, Wetland-Nonforest, River-Headwater to Large
<a href="#">Mille Lacs Uplands</a>	Forest-Lowland Coniferous, Forest-Upland Deciduous (Mixed hardwood-pine), Wetland-Nonforest, Lake-Deep, Forest-Upland Coniferous, Shrub/Woodland-Upland (Jack pine woodland), Shoreline-dunes-cliff/talus, River-Headwater to Large, River-Very Large (St. Croix River)
<a href="#">Glacial Lake Superior Plain</a>	Forest-Upland Deciduous (Aspen), Forest-Upland Coniferous (Pine flats), Forest-Upland Deciduous (Mixed hardwood-pine), River-Headwater to Large

**While we acknowledge that avoidance of all key habitats is not realistic, we do recommend that key habitats are avoided to the extent practicable. The information in this section should be used in future environmental review documents in describing the existing environment/ecological setting (ecological subsection descriptions) and impacts to key habitats.** NPC shapefiles can be a useful planning tool when used in combination with project shapefiles and key habitat descriptions (which include NPC crosswalks). As with the Areas of Biodiversity Significance, coverage for NPC is incomplete or preliminary for Clearwater, Beltrami, Hubbard, Cass, Itasca, and Aitkin counties. Likewise, **the DNR Endangered Species Review Coordinator should be contacted at the number provided above for obtaining preliminary shapefiles for areas for data exists.** To crosswalk the native plant communities to their corresponding key habitats (if applicable), refer to Appendix B of this guide or go to [http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/key\\_habitat\\_by\\_subsection.pdf](http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/key_habitat_by_subsection.pdf).

#### Specific Route Avoidance Comments

Following are specific route adjustment recommendations. DNR will likely have additional recommendations as the project is further developed/refined and as part of forthcoming environmental review and permitting.

- Shell River (Hubbard County) - Based on aerial photography, it appears there have been two corridors that have been used in the past near the Twin Lakes/Hinds Lake. From the standpoint of minimizing the number of crossings (and in absence of other factors unknown at this time), using the southern corridor of disturbance is prefer as it would cross one less tributary.
- Aitkin County - Based on aerial photography and other information, cutting east just south of the Moose River WMA (using the existing corridor of disturbance associated with a 250kV power line) would avoid Grayling Marsh WMA, Mcgregor WMA, Lawler WMA, and Salo Marsh WMA. DNR recommends the impacts and feasibility of this route be further assessed.

## Conclusion

Accommodating DNR recommendations through route planning will help to minimize potential impacts to wildlife, forestry, habitats, and recreation as well as facilitate permitting.

This review constitutes an office review only and is not a substitute for field review. The DNR may have comments that are more specific after more project details are known. The DNR looks forward to working with you on this project to assist in meeting projects goals while protecting Minnesota's natural resources. Please contact myself directly at (218)-308-2672 or Rian Reed at (218)-999-7826 if you have any questions.

Sincerely,



Nathan Kestner  
NW Regional Environmental Assessment Ecologist  
Division of Ecological and Water Resources

cc: Jamie Schrenzel, DNR  
Lisa Joyal, DNR  
Rian Reed, DNR  
Cindy Buttleman, DNR  
Joe Rokala, DNR  
Deb Pile, EFP

# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40

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August 21, 2014

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

Re: Sandpiper Pipeline Project – System Alternatives  
PUC Docket Numbers: PL-6668/CN-13-473 (Certificate of Need)  
PL-6668/PPL-13-474 (Route Permit)

The Minnesota Department of Natural Resources (DNR) previously provided input regarding the Pipeline Routing Permit Application and scoping for the Comparative Environmental Assessment (CEA) for the Sandpiper Pipeline Project. During the comment periods ending April 4, 2014 and May 30, 2014, the DNR requested further analysis of a number of routes and route segments in the relative vicinity of the Preferred Route proposed by the North Dakota Pipeline Company. The DNR also attended the August 7, 2014 PUC Agenda Meeting regarding routing alternatives. We appreciate the Public Utilities Commission (PUC) determination that routes identified in DNR letters will be further analyzed in the CEA. The following comments are submitted regarding the topic of “system alternatives,” generally defined as routes that do not share one or both of the Preferred Route Clearbrook, Minnesota and Superior, Wisconsin terminals.

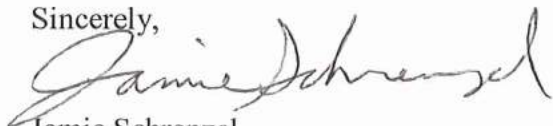
Though the DNR review did not focus on system alternatives, our previous letter stated that the DNR “supports the efforts of state and federal resource agencies to encourage analysis of topics including various routes in the event of a leak, leak risk analysis, and reducing impacts to wetlands, lakes and streams.” The Preferred Route for the Sandpiper Project is proposed in a region of the state that contains a concentration of important lakes for fisheries, trout streams, sensitive aquifers, public conservation lands, and mineral and forestry resources. The DNR is also concerned about “greenfield” routing along areas without previous disturbance.

Considering the current demand for transportation of oil from North Dakota and the Enbridge Line 3 project proposed to follow the Sandpiper Pipeline route, the Sandpiper route could become a new corridor for multiple pipelines. Therefore, the DNR encourages the PUC to strongly consider analysis of one or more system alternatives having fewer environmental and natural resource impacts than the Preferred Route in addition to route alternatives approved for inclusion in the CEA. Environmental review of one or more system alternatives should be equivalent to the analysis conducted for route alternatives. If a system alternative is included in the scope of an environmental review document, the DNR encourages interagency coordination so that the DNR can provide data regarding a new corridor prior to environmental review document publication.

Thank you for the opportunity to provide these additional comments regarding system alternatives.



Sincerely,



Jamie Schrenzel  
Principal Planner  
Environmental Review Unit  
(651) 259-5115

cc: Larry Hartman, Minnesota Department of Commerce  
Patrice Jensen, Minnesota Pollution Control Agency  
Sara Ploetz, Enbridge



# Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

June 20, 2014

Mr. Larry B. Hartman  
 Environmental Manager  
 Minnesota Department of Commerce  
 85 7<sup>th</sup> Place East, Suite 500  
 St. Paul, MN 55101-2198

RE: Enbridge Sandpiper Pipeline Project - North Dakota Pipeline Company LLC  
 Pipeline Routing Permit Application, MPUC Docket No. PL-6668/PPL-13-474  
 Replacement May 30, 2014 Letter

Dear Mr. Hartman:

On April 14, 2014, the Minnesota Public Utilities Commission (PUC) extended the comment period in the matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project (Sandpiper) in Minnesota. This letter appends the Minnesota Pollution Control Agency (MPCA) letter on this subject, which was submitted to you on April 4, 2014.

We understand the topics open for comment include alternate routes, human and environmental impacts to be studied in the Comparative Environmental Analysis (CEA), and whether any specific methods or mitigation exist to address these impacts that should be studied in the CEA. MPCA's additional comments on these topics include:

- Inspection and monitoring
- Additional items for evaluation in the CEA
- Watershed Restoration and Protection Strategy
- Carbon footprint
- Environmental justice
- Alternate route analysis
- Cumulative impacts

## **Inspection and Monitoring**

On April 16, 2014, Enbridge, doing business as North Dakota Pipeline Company LLC, submitted a proposal to the MPCA regarding independent/third-party environmental monitors for the proposed Sandpiper project. MPCA does not agree that Enbridge should be hiring and directing these inspectors/monitors, but rather that they report directly to a state agency with jurisdiction over the project. The MPCA requests that the PUC require that another agency directly hire independent inspection and monitoring contractors and/or temporary staff to conduct this work under MPCA oversight to be funded by Enbridge.

The structure, workplan, and cost of a monitoring and inspection plan should be determined while the CEA is being prepared. The MPCA and Minnesota Department of Natural Resources (MDNR) staff, who have been working collaboratively on the Sandpiper project, are willing to participate with Enbridge and

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participating agencies to develop the appropriate information and mechanism. The mechanisms for this would be worked out among the parties. The payment of the state's reasonable costs should be a provision of the PUC's route permit issued to Enbridge.

#### **Additional Items for Evaluation in the CEA**

The MPCA requests that Enbridge complete a Phase I Environmental Assessment (Phase I) of the selected pipeline construction corridor in accordance with the All Appropriate Inquiry (AAI) standard as per the National Environmental Policy Act (NEPA), Title 40, Code of Federal Regulations Part 312. The Phase I is conducted to research and review potential locations of existing/historic dumps, hazardous waste sites, and other environmental concerns. If areas of environmental concern are identified in association with construction of the pipeline, Enbridge should be required to prepare work plans to describe how solid/hazardous waste/contaminated soil and groundwater will be investigated prior to construction, and how impacted areas will be dealt with in accordance with state and local regulations.

MPCA requests that the CEA include a detailed risk assessment regarding the potential for leaks to occur, how much oil might be released, and how this could affect groundwater, surface water, aquatic life, and others. The hydrogeology of the pipeline corridor area should be studied to determine potential fate and transport of a release, and potential vapor intrusion issues if a release occurs in close proximity to human habitation.

#### **Watershed Restoration and Protection Strategy**

In 2006, the Minnesota Legislature passed the Clean Water Legacy Act, which required the MPCA to develop an approach to comprehensively monitor and assess the waters of the state every 10 years, and provided one-time funding for that effort. In order to provide long term, consistent funding for Minnesota's clean water efforts, on November 4, 2008, Minnesota's voters passed the Clean Water Land and Legacy Amendment (Legacy Amendment) to the Minnesota Constitution to, in part, protect and restore lakes, rivers, streams, and groundwater. The Amendment imposed three-eighths of one percent sales tax to fund the effort for 25 years. Subsequently, in 2013, the Clean Water Accountability Act was passed by the Minnesota Legislature. This new law requires the MPCA to develop watershed restoration and protection strategies (WRAPS) for each of the state's 81 major watershed units, which correspond to the 8-digit hydrologic unit codes (HUCs). WRAPS include the monitoring and assessment information, as well as land use-based models that demonstrate the source of the highest contributors of pollutants in each watershed. This information is then used to develop strategies to either protect waters that meet water quality standards or restore waters that do not meet standards.

The WRAPS is a collaborative effort that involves the MPCA, the MDNR, the Board of Water and Soil Resources, the Department of Health, the Department of Agriculture, local soil and water conservation districts, watershed districts, the University of Minnesota, industry and business organizations, and the private citizens of Minnesota. WRAPS components are: monitoring and assessment of hydrology and the chemical and biological constituents of water quality, a stressor identification process, total maximum daily loads (TMDLs) and restoration plans for impaired waters, protection strategies for waters that currently meet standards, and a civic engagement process to assist stakeholders with implementing protection and restoration strategies.

While not yet completed, WRAPS are in process in the following major watersheds that the Sandpiper proposal will cross, also identified by the corresponding eight-digit HUCs:

- Grand Marais Creek                   HUC 09020306
- Red Lake River                        HUC 09020303
- Clearwater River                     HUC 09020305
- Mississippi – Headwaters           HUC 07010101
- Crow Wing River                     HUC 07010106
- Pine River                             HUC 07010105
- Mississippi – Grand Rapids         HUC 07010103
- Kettle River                         HUC 07030003
- St. Louis River                       HUC 04010201
- Nemadji River                        HUC 04010301

One of the first tenets of any protection strategy is to avoid impacts where possible. The Sandpiper proposal is not consistent with the protection strategies that are currently in development for these WRAPS, due to the large number of high quality surface waters that lie along the path of the proposed route. Enbridge should participate in stakeholder groups for these WRAPS. Stakeholder groups provide a forum for engaged citizens and interested groups to develop implementation strategies to restore and protect each watershed. The CEA should review and consider how to integrate the strategies into the proposal, or find alternate routes that have less potential for impacting surface and groundwater.

#### **Carbon Footprint – Greenhouse Gas Emissions**

The MPCA is concerned about the carbon footprint of a project. The Minnesota Legislature established greenhouse gas (GHG) reduction goals in the Next Generation Energy Act (Minn. Stat. 216H.02). The goals of the Next Generation Energy Act are to reduce greenhouse gas emissions by 15 percent below 2005 levels by 2015, and 80 percent by 2050. Greenhouse gases, upon release to the atmosphere, warm the atmosphere and surface of the planet, and lead to alterations in the earth's climate. The GHG emissions measured and reported in Minnesota include carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), sulfur hexafluoride (SF<sub>6</sub>), and two classes of compounds known collectively as hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs). These GHG emissions result from fuel combustion, the calcination of limestone, the degradation of organic (peats) and mineral soils, permanent land clearing and forest harvesting, and a variety of other sources. Pertaining to this project, source types include stationary and mobile source combustion from construction equipment, emissions from venting, and wetland and forest disruptions.

To track progress with the Next Generation Energy Act reduction goals, the CEA should evaluate the GHG emissions from the project and the impact these emissions may have on the attainment of the state's GHG reduction goals. Alternatives and options to reduce GHG emissions or to offset/mitigate GHG emissions should also be identified in the CEA. In addition, the CEA should evaluate the GHG impacts if this project is not built – specifically, if oil is transported by rail or truck instead of by pipeline.

#### **Environmental Justice**

The MPCA works to incorporate environmental justice principles into its projects. Environmental Justice (EJ) involves assuring the fair treatment and meaningful involvement of all persons, regardless of race or income when making environmental decisions. Fair treatment means that no group of people should

Mr. Larry B. Hartman

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bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies. Meaningful involvement means: people have an opportunity to participate in decisions about activities that may affect their health and the environment in which they live; the public's contribution can influence the regulatory agency's decision; their concerns will be considered in the decision making process; and, decision makers seek out and facilitate the involvement of those potentially affected.

The proposed route of the Sandpiper Pipeline and other alternate routes may directly affect low income and minority populations. If a pipeline leak or break occurs, adverse impacts could occur in both surface and subsurface drinking water supplies, areas with stands of wild rice important to local Tribes and tribal members, cropland areas, impaired waters, and wildlife management areas among other types of environmental, social and economic impacts. If the Northern route or other alternate routes are chosen, the Sandpiper Pipeline may affect tribal lands.

The CEA should include consideration of EJ issues. The CEA should look at how pipeline construction and operation, and potential problems during each of these phases, may cause disproportionate impacts on low-income or minority populations. In addition, local, state, and federal agencies should engage residents to assure that they are aware of opportunities to participate in the process and understand how their comments and concerns are incorporated into the final draft CEA.

#### **Alternate Route Analysis**

The MPCA staff's analysis of the proposed Sandpiper route shows many water body crossings for which there would be very difficult or no access downstream of the crossing to clean up spills in the event of a crude oil release. The lack of possible access to these areas by people and equipment necessary to clean up spills increases the likelihood that an incident could result in significant long-term environmental damage. A failure to account for these possibilities is considered to be a substantial flaw with the currently proposed Sandpiper route.

There are many variables that could be examined when considering the potential for environmental damage in the event of a release. These include: soil types, wetland types, sensitive or endangered species, proximity to aquifers, hydrology, forest types, state park boundaries, proximity to human populations, proximity to areas with stands of wild rice, connectivity of surface waters, and others. However, for purposes of providing a simpler and effective comparison between alternative route proposals that is both visual and quantifiable (within certain limitations that will be discussed in this letter), MPCA staff has elected to compare the routes based on access to potential leak sites for purposes of containment of spills and possible clean up.

To minimize variables and subjectivity for this analysis, MPCA staff opted to identify, using ArcGIS technology, water body crossings that had neither road or traversable upland features within 250 feet of flowages of water (heavily forested areas are not considered for this purpose to be traversable, as trees would have to be removed before equipment could be brought in), or portions of larger wetland complexes that fell within a 2,000 foot buffer of the point where the proposed pipeline route was to cross a stream, lake, or wetland. The 250-foot distance from access point to flowage is somewhat arbitrary. MPCA staff conferred with contractors and engineers who specialize in road construction, and most felt that in a best-case scenario, with aggregate and equipment available, a 250-foot road into a bog or wetland would be constructed within 24 hours. Thus, for purposes of this analysis, MPCA staff



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assumed that it is possible to build an access road to reach areas where containment of a spill might be accomplished before the spilled product covers an area large enough that cleanup would be highly destructive to a sensitive environment, or impossible. Similarly, there is no regulatory basis for choosing the 2,000 foot buffer distance, other than it is a significant distance for oil impacts to occur over any surface water and easy to apply consistently statewide. It is a distance that for most people would be easy to visualize, yet small enough to create a fair comparison between routes. These numbers provide a basis for comparisons between routes and have little significance beyond that. However, if these criteria are used consistently for all proposed routes, it does provide a basis to compare the potential for each route to cause considerable environmental damage in the event of a release.

There are some factors to consider that fall beyond the scope of this comparison. For example, the water crossings proposed for the Sandpiper route are frequently streams or flowages with connectivity to other water bodies downstream. By contrast, water body crossings on the Northern route, including the Alberta Clipper Pipeline, frequently involve very large wetland complexes rather than smaller, faster moving flowages. The area needed to access might be much greater, but the oil may move more slowly in such areas. Counting becomes a bit more difficult here as well, because it is difficult to establish criteria for counting "crossings" that is comparable to the different features observed in the Sandpiper route. In most cases, MDNR catchment flow lines were used to distinguish one crossing point from another.

In any case, the method used as a basis for comparison by MPCA staff does provide quantifiable data to analyze the proposed routes from a meaningful perspective: Which route proposals pose the greatest risk to create destructive and expensive containment and cleanup operations in the event of a spill?

MPCA staff compared four proposed routes in their entirety. The four proposed routes that were compared were (1) The currently proposed Sandpiper route; (2) The "Northern" route, which includes the Alberta Clipper pipeline, which has been suggested as an alternative by other entities; (3) The "Alternative 3" route which was identified as a possible alternative by MPCA staff; and (4) The southern "Alternative 4" route which exits the state at the Iowa border and would be required to tie into the Enbridge infrastructure either in another state, or to circle around outside of Minnesota to end at the Superior Terminal. The fourth route was suggested as an alternative by a citizen group.

Any water body crossing, especially streams, rivers, or flowages of any kind that can carry oil downstream, pose the risk of creating large scale environmental damage in the event of a release. If possible, it is best to avoid crossing surface waters altogether with oil pipelines in order to minimize this risk. However, if a water body, bog or otherwise sensitive area is to be crossed, then serious consideration should be given to whether the site can be accessed quickly in the event of a release to contain the product, minimize migration of product into surface waters, soils and groundwater, and perform clean-up operations. In situations where roads have to be constructed to access a spill, the act of constructing the road, excavating and clearing vegetation can all exacerbate the damage that the spill itself created. Additionally, placement of flow control valves in strategic locations along/near sensitive areas may help to minimize backflow of product out of a fractured line into those areas.

A difficulty with aerial photograph analysis as opposed to field surveying of water crossings is that it is difficult to determine whether a stream or wetland is permanently, seasonally, or intermittently flooded. MPCA staff relied on National Wetland Inventory maps to identify wetland types, which will to some extent help to determine the likelihood of the wetland having open water at the time of a leak,

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which would allow transport of released oil to occur more quickly, or merely be in a state of saturated soil, which would result in easier and faster containment and cleanup of a spill.

The results of the MPCA staff analysis are as follows:

#### Sandpiper Route

The proposed Sandpiper route crosses 28 water bodies for which there is no access for possible containment within 2,000 linear feet downstream of the proposed pipe crossing. Of these 28 water body crossings, one is a stream to lake system, 12 are wetland complexes, 10 are streams that flow to wetland systems, and five are streams that flow to areas with stands of wild rice. Below is a list of the water body crossings for this route option:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Sandpiper Route	Mahtowa	T47 R18W S8	Moose Horn River
Sandpiper Route	Salo	T47 R22W S1	Headwaters Sandy River
Sandpiper Route	Salo	T47 R22W S2	Headwaters Sandy River
Sandpiper Route	Automba	T47 R21W S6	West Branch River
Sandpiper Route	Salo	T47 R22W S6	Headwaters Sandy River
Sandpiper Route	Automba	T47 R21W S6	West Branch River
Sandpiper Route	Automba	T47 R21W S1	Heikkila Creek-Kettle River
Sandpiper Route	Atkinson	T48 R18W S36	Blackhoof River
Sandpiper Route	Copley	T147 R37W S34	Walker Brook
Sandpiper Route	Moose Creek	T146 R36W S29	Upper Rice Lake-Wild Rice River
Sandpiper Route	Bull Moose	T138 R31W S12	Headwaters South Fork Pine River
Sandpiper Route	Bull Moose	T138 R31W S11	Headwaters South Fork Pine River
Sandpiper Route	Bull Moose	T138 R31W S11	Headwaters South Fork Pine River
Sandpiper Route	Arago	T141 R35W S17	Hay Creek
Sandpiper Route	Northwest Aitkin	T50 R26W S22	White Elk Creek
Sandpiper Route	McKinley	T138 R32W S3	Goose Lake-Big Swamp Creek
Sandpiper Route	McKinley	T138 R32W S4	Goose Lake-Big Swamp Creek
Sandpiper Route	Crow Wing Lake	T139 R33W S36	Burgen Lake
Sandpiper Route	Crow Wing Lake	T139 R33W S36	Burgen Lake
Sandpiper Route	Crow Wing Lake	T139 R33W S33	Town of Huntersville-Crow Wing River
Sandpiper Route	Straight River	T139 R35W S36	Blueberry Lake-Shell River
Sandpiper Route	Blind Lake	T139 R28W S26	Arrowhead Lake
Sandpiper Route	Hubbard	T139 R34W S31	Shell River
Sandpiper Route	Beulah	T139 R25W S9	Moose River
Sandpiper Route	Straight River	T139 R35W S6	Straight River
Sandpiper Route	Bear Creek	T145 R36W S35	Gill Lake-Mississippi River
Sandpiper Route	Todd	T140 R35W S6	Fishhook Lake
Sandpiper Route	Lake Hattie	T144 R35W S19	LaSalle Lake-Mississippi River

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Hill Route

The "Hill route alternative," suggested by the MDNR as a way to avoid features of concern, would not differ from the proposed Sandpiper route based on the criteria discussed here.

Northern Route

The Northern route, which follows the path of the Alberta Clipper project crosses 20 water bodies for which there is no access within 2,000 feet downstream of the location where crossings would occur if the route were followed. Along the Northern route, water bodies without access to potential leak sites within 2,000 feet include one stream that flows to a lake, 14 wetland complexes, five stream/wetland systems, and two streams or wetlands that flow to areas with stands of wild rice or wetlands. Below is a list of the water body crossings for this route option:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Northern Route	Pot Shot Lake	T52 R21W S8	Floodwood River
Northern Route	Northeast Aitkin	T52 R22W S1	West Branch Floodwood River
Northern Route	Wawina	T53 R22W S27	West Branch Floodwood River
Northern Route	Deer Lake	T56 R26W S29	Mississippi River
Northern Route	Bowstring Lake	T144 R26W S3	Little Winnibigoshish Lake-Miss. River
Northern Route	Morse	T145 R25W S35	White Oak Lake-Mississippi River
Northern Route	North Cass	T145 R27W S35	Sixmile Brook
Northern Route	North Cass	T145 R27W S34	Sixmile Brook
Northern Route	North Cass	T145 R27W S34	Sixmile Brook
Northern Route	North Cass	T145 R27W S33	Sixmile Brook
Northern Route	North Cass	T145 R28W S26	Sixmile Brook
Northern Route	Wawina	T53 R22W S28	West Branch Floodwood River
Northern Route	Blackberry	T54 R24W S13	Blueberry Lake-Mississippi River
Northern Route	North Cass	T145 R29W S24	Portage Creek
Northern Route	North Cass	T145 R29W S20	Portage Creek
Northern Route	Wilton	T147 R34W S34	Grant Creek
Northern Route	Pot Shot Lake	T52 R21W S22	Floodwood River
Northern Route	Perch Lake	T49 R18W S7	Perch Lake
Northern Route	North Carlton	T49 R19W S1	Stoney Brook
Northern Route	Arrowhead	T50 R19W S27	Bog Lake

Alternative 3 Route

The Alternative 3 route corridor, which was referenced earlier in the letter, begins at the same western point that both the Sandpiper and Northern routes do; however, roughly 20 miles west of the North Dakota border it veers south and follows an existing (possibly abandoned) pipeline south and then southwest to roughly five miles west of North Branch, Minnesota, where it then follows another corridor

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in a northerly direction, where it eventually intersects with the proposed Sandpiper route just west of Superior, Wisconsin. This route has 7 water body crossings with no access within 2,000 feet downstream of the pipe crossing; however, these water bodies are often smaller wetland complexes than are seen on either the Sandpiper route or the Northern route. These crossings without access within 2,000 feet include two wetland complexes, four stream/wetland systems, and one area with stands of wild rice. Below is a list of the water body crossings for this route option:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Alternate Route 3	Mission Creek	T40 R21W S12	Mission Creek
Alternate Route 3	Fawn Lake	T132 R32W S34	Lower Turtle Creek
Alternate Route 3	Fawn Lake	T132 R32W S19	Fish Trap Creek
Alternate Route 3	Kettle River	T44 R20W S8	City of Willow River-Kettle River
Alternate Route 3	Bartlett	T133 R34W S23	Moran Creek
Alternate Route 3	Compton	T134 R36W S5	Deer Creek-Leaf River
Alternate Route 3	Twin Lakes	T48 R17W S21	Blackhoof River

#### Alternative 4 Route

The Alternative 4 corridor enters the state in Traverse County just west of Wheaton, Minnesota, and runs to a southeast bearing until it exits the state south of Austin, Minnesota. A pipeline along this route would cross no water bodies lacking access within 2,000 feet of a potential leak site in surface water. There are very few water bodies crossed by this route in general over the proposed route.

#### National Hydrography Dataset

Even if access issues are taken out of the equation, the proposed Sandpiper route does not fare well in comparisons with alternative proposals based on examination of the National Hydrography Dataset (NHD) layer. Using the NHD layer, the proposed Sandpiper route would cross 20 water bodies, the Northern route would cross 10, the Alternative 3 route would cross 12, and the Alternative 4 route would cross 1 water body within the state of Minnesota. The NHD layer obviously does not identify all water bodies that are being crossed; however, it does identify water bodies that are part of a connected network of surface waters which may also be a good gauge of potential environmental impact if an incident were to occur.

Notably, the two routes in this analysis that crossed the fewest water bodies and put water resources at the lowest risk for environmental damage both aligned away from the Clearbrook terminal. Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest concentration of lakes, streams, and open-water wetlands in the state. Any route proposed out of Clearbrook, either south or east will cross dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in

western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

### Summary of Route Analysis

There are numerous pipeline corridors that currently exist in Minnesota. Of those, there are several that cross far fewer water bodies and have better potential for access in the event of a release than the current Sandpiper proposal. MPCA staff examined three existing corridors in addition to the proposed Sandpiper route. While performing risk assessment, the current use of the corridors in question should also be considered, as much of the proposed Sandpiper route follows a corridor in which three other oil pipelines currently exist. Thus, not just one pipeline would be crossing sensitive water bodies with limited access, but four. The likelihood of an incident in which crude oil product is released is thus greater than what a single pipeline would entail. This is also true of the Northern route, in which numerous pipelines carrying crude oil exist. What has happened in the past with regard to location of pipeline routes is from this perspective unfortunate; MPCA staff believes that past routes have crossed too many water bodies in inaccessible areas, and the risk of large-scale impact as a result of a release incident is significant and ongoing. As this analysis shows, options posing a lesser risk to surface waters may be available.

Of the four possible routes that MPCA staff has examined, the proposed Sandpiper route and the previously followed Northern route show a significantly higher potential for environmental damage than either the Alternative 3 or Alternative 4 routes. It is also possible that an as-yet unexplored route could also score well relative to the Sandpiper proposal. The analysis of the Alternative 4 route is incomplete in that possible impacts outside of the Minnesota state boundaries were not looked at, so the surface waters avoided or protected by this route are only located in Minnesota per this analysis. It is also acknowledged that the MPCA staff analysis focused on the potential water quality and natural resource aspects of the project and not on other types of resources or land uses.

Nevertheless, the criteria adopted for this analysis show a clear difference in potential risk to surface waters between the Sandpiper proposal and other possible routes, and that in the event of a significant oil release, the Sandpiper route proposal has a significantly greater potential for large-scale environmental damage than other route proposals.

It is important to note that the construction of accesses through sensitive "no access" areas as a preventative measure can also create environmental hazards and damages and cannot be assumed to be an acceptable remedy. Rather, route proposals put forth now and in the future should take these factors into consideration and avoid continuing to cross surface waters at these locations. The minimization of surface water crossings in any location should become a priority for consideration when planning a route to construct a pipeline.

### Cumulative Impacts

The NEPA, Title 40, C.F.R. 1508.7, defines cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes

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such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

The cumulative impacts review in the CEA should include current and proposed transmission line corridors, highway construction, water delivery systems, landfills, railroads, power generations plants, feedlots, and mine and mineral extraction sites which have the potential to interact with the proposed project. The CEA should also review the potential for significant cumulative effects related to past, present and future projects in the Duluth/Superior area involving increased transmission, storage, processing or refining activities, including the expansion of the Calumet Superior Refining facility in Superior, Wisconsin, or transportation of oil, fuels or products refined or manufactured from oil. Areas in which such impacts could occur include air quality in Duluth and the surrounding area in Minnesota, water quality as related to new or increased discharges or shipping activities, and transportation whether by truck, rail or ships.

The CEA should identify the impacts of past incidents associated with pipeline construction and operation, past incidents involving two or more associated utility lines, accidents or emergencies which may arise due to an unforeseen chain of events during the operational life of the pipeline, and effects within the project limits, and local and regional effects. Cumulative impacts may occur to:

- Human activities, such as recreation, agriculture and loss of prime farmland
- Wildlife including migratory birds and aquatic species
- Habitat and alterations to terrestrial vegetation
- Endangered species
- Air quality, including dust (particulate matter) and visual impacts
- Land values
- Watersheds
- Local and state socioeconomics

According to data provided by the Pipeline and Hazardous Materials Safety Administration (PHMSA), to date, there are 2,408 miles of crude oil pipeline in the state of Minnesota. More are planned within the next few years. Much of this infrastructure exists in corridors shared by several other pipelines carrying liquefied petroleum gas, natural gas, diluent for tar sands oil, refined petroleum product and other hazardous materials. In total, there are 10,475 miles of pipeline through the state. According to PHMSA, over the last 20 years, there has been an average of 14 spills from pipelines per year in Minnesota, an average of 1,812 barrels of hazardous liquids spilled per year in Minnesota, an average of 1,093 net barrels lost per year in Minnesota, and an average of \$3,135,572 of property damage annually in Minnesota. Five lives have been lost as a result of pipeline incidents.

The MPCA has numerous concerns about the number of pipelines planned to use the same corridors. With each water body crossed by a pipeline carrying crude oil, the risk of a major incident increases. A cursory review of the PHMSA web site identifies apparent causes of pipeline failure to include: incorrect operation, equipment failure, internal and external corrosion, third party damage (excavation), construction damage, material failure (pipe, fitting, weld), weld leak, and other unknown causes. For example, at the site of the Enbridge pipeline release in Marshall, Michigan, the National Transportation Safety Board found “that deficiencies in Enbridge’s integrity management (IM) program contributed to

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the release of hazardous liquid..." (Federal Register, Volume 79, No. 87, Tuesday, May 6, 2014 (25990 – 25994). See also Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010 (NTSB/PAR-12/01, PB2012-916501). Ultimately, the perspective should not be if a pipeline fails, but how will a release be mitigated when a failure occurs and at any given location (and the environmental susceptibility of that area to a release).

As explained above, MPCA examination of the proposed Sandpiper route and the previously used Northern route (Alberta Clipper) shows that significantly more open water bodies are crossed by the pipelines in these corridors than alternative routes. Far more of these crossings have no available access within a 2,000 foot buffer, meaning that release incidents are more likely to impact surface waters within that 2,000 buffer. Both the Sandpiper and Alberta Clipper routes are corridors for numerous crude oil pipelines; consequently, these routes are more vulnerable and less able to properly mitigate damage to aquatic environments. Whereas oil does travel through soils and overland, it travels significantly farther in aquatic environments.

Pipeline construction will involve soil excavation, vegetation removal, the crossing of water bodies, and the alteration or loss of wildlife habitat. These activities and the creation of new corridors can result in forest fragmentation affecting numerous species of wildlife that require expanses of undisturbed forest. Wetland perches may be broken causing alteration of natural hydrology in wetland areas, and stream geomorphology can be altered by damaging banks or stirring up stream bottoms. Herbicides used to control vegetation in pipeline corridors may adversely affect pollinators, particularly honeybees, resulting in hidden impacts that are difficult to trace, but nonetheless exist.

The construction, operation, maintenance, incidents and repairs associated with crude oil pipelines have been accompanied by significant environmental impacts. With more proposals in the works, more cumulative impacts can be expected to occur. Therefore, concerted effort is needed to take a close look at and carefully analyze the creation of common routes and corridors for pipeline projects where the risks of impacts to the environmental and human health can be minimized. The routes that have been used in the past pose substantial risks as noted above. Continuing to open more corridors will increase these risks and impacts. The MPCA would support and participate in a joint effort by state agencies to begin examining the feasibility of such a corridor, both for the purpose of expediting approval of future proposals and minimizing the potential for environmental impacts. A fresh look at the routing of energy transportation projects from a larger and more comprehensive perspective has the potential to make a significant contribution to streamlining the review and permitting processes as well as preventing and minimizing cumulative impacts.

### Conclusion

It is requested that the comments provided in this letter and MPCA's letter dated April 4, 2014, be entered into the record to be addressed in the Draft CEA. We continue to look forward to assisting the Department of Commerce, as desired, during the preparation of the CEA for this project and its subsequent review upon its release. Through this process, the MPCA seeks to obtain further additional information to facilitate the MPCA staff review of the Project, well in advance of the time a decisions on

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the required MPCA authorizations are needed to commence construction. Ultimately, it is the responsibility of North Dakota Pipeline Company LLC to secure any required permits and to comply with any requisite permit conditions. If you have any questions, please contact me at 651-757-2465.

Sincerely,



for

Patrice Jensen  
Planner Principal  
Environmental Review  
Resource Management and Assistance Division

PJ:bt

cc: Jamie Schrenzel, MDNR  
Desiree Morningstar, U.S. Army Corps of Engineers  
Sara Ploetz, Enbridge  
Reed Larson, MPCA  
Bill Sierks, MPCA  
Laurel Mezner, MPCA  
Jim Courneya, MPCA  
Brian Livingston, MPCA  
Jeff Udd, MPCA  
Steve Lee, MPCA  
Doreen Fier-Tucker, MPCA  
Pat Carey, MPCA  
Catherine Neuschler, MPCA  
Craig Affeldt, MPCA





## Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

June 24, 2014

Mr. Larry B. Hartman  
 Environmental Manager  
 Minnesota Department of Commerce  
 85 7<sup>th</sup> Place East, Suite 500  
 St. Paul, MN 55101-2198

RE: Enbridge Sandpiper Pipeline Project - North Dakota Pipeline Company LLC  
 Pipeline Routing Permit Application, MPUC Docket No. PL-6668/PPL-13-474  
 Replacement May 30, 2014 Letter with Maps

Dear Mr. Hartman:

On April 14, 2014, the Minnesota Public Utilities Commission (PUC) extended the comment period in the matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project (Sandpiper) in Minnesota. This letter appends the Minnesota Pollution Control Agency (MPCA) letter on this subject, which was submitted to you on April 4, 2014.

We understand the topics open for comment include alternate routes, human and environmental impacts to be studied in the Comparative Environmental Analysis (CEA), and whether any specific methods or mitigation exist to address these impacts that should be studied in the CEA. MPCA's additional comments on these topics include:

- Inspection and monitoring
- Additional items for evaluation in the CEA
- Watershed Restoration and Protection Strategy
- Carbon footprint
- Environmental justice
- Alternate route analysis
- Cumulative impacts

### **Inspection and Monitoring**

On April 16, 2014, Enbridge, doing business as North Dakota Pipeline Company LLC, submitted a proposal to the MPCA regarding independent/third-party environmental monitors for the proposed Sandpiper project. MPCA does not agree that Enbridge should be hiring and directing these inspectors/monitors, but rather that they report directly to a state agency with jurisdiction over the project. The MPCA requests that the PUC require that another agency directly hire independent inspection and monitoring contractors and/or temporary staff to conduct this work under MPCA oversight to be funded by Enbridge.

The structure, work plan, and cost of a monitoring and inspection plan should be determined while the CEA is being prepared. The MPCA and Minnesota Department of Natural Resources (MDNR) staff, who have been working collaboratively on the Sandpiper project, are willing to participate with Enbridge and

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participating agencies to develop the appropriate information and mechanism. The mechanisms for this would be worked out among the parties. The payment of the state's reasonable costs should be a provision of the PUC's route permit issued to Enbridge.

### **Additional Items for Evaluation in the CEA**

The MPCA requests that Enbridge complete a Phase I Environmental Assessment (Phase I) of the selected pipeline construction corridor in accordance with the All Appropriate Inquiry (AAI) standard as per the National Environmental Policy Act (NEPA), Title 40, Code of Federal Regulations Part 312. The Phase I is conducted to research and review potential locations of existing/historic dumps, hazardous waste sites, and other environmental concerns. If areas of environmental concern are identified in association with construction of the pipeline, Enbridge should be required to prepare work plans to describe how solid/hazardous waste/contaminated soil and groundwater will be investigated prior to construction, and how impacted areas will be dealt with in accordance with state and local regulations.

MPCA requests that the CEA include a detailed risk assessment regarding the potential for leaks to occur, how much oil might be released, and how this could affect groundwater, surface water, aquatic life, and others. The hydrogeology of the pipeline corridor area should be studied to determine potential fate and transport of a release, and potential vapor intrusion issues if a release occurs in close proximity to human habitation.

### **Watershed Restoration and Protection Strategy**

In 2006, the Minnesota Legislature passed the Clean Water Legacy Act, which required the MPCA to develop an approach to comprehensively monitor and assess the waters of the state every 10 years, and provided one-time funding for that effort. In order to provide long term, consistent funding for Minnesota's clean water efforts, on November 4, 2008, Minnesota's voters passed the Clean Water Land and Legacy Amendment (Legacy Amendment) to the Minnesota Constitution to, in part, protect and restore lakes, rivers, streams, and groundwater. The Amendment imposed three-eighths of one percent sales tax to fund the effort for 25 years. Subsequently, in 2013, the Clean Water Accountability Act was passed by the Minnesota Legislature. This new law requires the MPCA to develop watershed restoration and protection strategies (WRAPS) for each of the state's 81 major watershed units, which correspond to the 8-digit hydrologic unit codes (HUCs). WRAPS include the monitoring and assessment information, as well as land use-based models that demonstrate the source of the highest contributors of pollutants in each watershed. This information is then used to develop strategies to either protect waters that meet water quality standards or restore waters that do not meet standards.

The WRAPS is a collaborative effort that involves the MPCA, the MDNR, the Board of Water and Soil Resources, the Department of Health, the Department of Agriculture, local soil and water conservation districts, watershed districts, the University of Minnesota, industry and business organizations, and the private citizens of Minnesota. WRAPS components are: monitoring and assessment of hydrology and the chemical and biological constituents of water quality, a stressor identification process, total maximum daily loads (TMDLs) and restoration plans for impaired waters, protection strategies for waters that currently meet standards, and a civic engagement process to assist stakeholders with implementing protection and restoration strategies.

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While not yet completed, WRAPS are in process in the following major watersheds that the Sandpiper proposal will cross, also identified by the corresponding eight-digit HUCs:

- Grand Marais Creek HUC 09020306
- Red Lake River HUC 09020303
- Clearwater River HUC 09020305
- Mississippi – Headwaters HUC 07010101
- Crow Wing River HUC 07010106
- Pine River HUC 07010105
- Mississippi – Grand Rapids HUC 07010103
- Kettle River HUC 07030003
- St. Louis River HUC 04010201
- Nemadji River HUC 04010301

One of the first tenets of any protection strategy is to avoid impacts where possible. The Sandpiper proposal is not consistent with the protection strategies that are currently in development for these WRAPS, due to the large number of high quality surface waters that lie along the path of the proposed route. Enbridge should participate in stakeholder groups for these WRAPS. Stakeholder groups provide a forum for engaged citizens and interested groups to develop implementation strategies to restore and protect each watershed. The CEA should review and consider how to integrate the strategies into the proposal, or find alternate routes that have less potential for impacting surface and groundwater.

### **Carbon Footprint – Greenhouse Gas Emissions**

The MPCA is concerned about the carbon footprint of a project. The Minnesota Legislature established greenhouse gas (GHG) reduction goals in the Next Generation Energy Act (Minn. Stat. 216H.02). The goals of the Next Generation Energy Act are to reduce greenhouse gas emissions by 15 percent below 2005 levels by 2015, and 80 percent by 2050. Greenhouse gases, upon release to the atmosphere, warm the atmosphere and surface of the planet, and lead to alterations in the earth's climate. The GHG emissions measured and reported in Minnesota include carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), sulfur hexafluoride (SF<sub>6</sub>), and two classes of compounds known collectively as hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs). These GHG emissions result from fuel combustion, the calcination of limestone, the degradation of organic (peats) and mineral soils, permanent land clearing and forest harvesting, and a variety of other sources. Pertaining to this project, source types include stationary and mobile source combustion from construction equipment, emissions from venting, and wetland and forest disruptions.

To track progress with the Next Generation Energy Act reduction goals, the CEA should evaluate the GHG emissions from the project and the impact these emissions may have on the attainment of the state's GHG reduction goals. Alternatives and options to reduce GHG emissions or to offset/mitigate GHG emissions should also be identified in the CEA. In addition, the CEA should evaluate the GHG impacts if this project is not built – specifically, if oil is transported by rail or truck instead of by pipeline.

### **Environmental Justice**

The MPCA works to incorporate environmental justice principles into its projects. Environmental Justice (EJ) involves assuring the fair treatment and meaningful involvement of all persons, regardless of race or income when making environmental decisions. Fair treatment means that no group of people should

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bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies. Meaningful involvement means: people have an opportunity to participate in decisions about activities that may affect their health and the environment in which they live; the public's contribution can influence the regulatory agency's decision; their concerns will be considered in the decision making process; and, decision makers seek out and facilitate the involvement of those potentially affected.

The proposed route of the Sandpiper Pipeline and other alternate routes may directly affect low income and minority populations. If a pipeline leak or break occurs, adverse impacts could occur in both surface and subsurface drinking water supplies, areas with stands of wild rice important to local Tribes and tribal members, cropland areas, impaired waters, and wildlife management areas among other types of environmental, social and economic impacts. If the Northern route or other alternate routes are chosen, the Sandpiper Pipeline may affect tribal lands.

The CEA should include consideration of EJ issues. The CEA should look at how pipeline construction and operation, and potential problems during each of these phases, may cause disproportionate impacts on low-income or minority populations. In addition, local, state, and federal agencies should engage residents to assure that they are aware of opportunities to participate in the process and understand how their comments and concerns are incorporated into the final draft CEA.

### **Alternate Route Analysis**

The MPCA staff's analysis of the proposed Sandpiper route shows many water body crossings for which there would be very difficult or no access downstream of the crossing to clean up spills in the event of a crude oil release. The lack of possible access to these areas by people and equipment necessary to clean up spills increases the likelihood that an incident could result in significant long-term environmental damage. A failure to account for these possibilities is considered to be a substantial flaw with the currently proposed Sandpiper route.

There are many variables that could be examined when considering the potential for environmental damage in the event of a release. These include: soil types, wetland types, sensitive or endangered species, proximity to aquifers, hydrology, forest types, state park boundaries, proximity to human populations, proximity to areas with stands of wild rice, connectivity of surface waters, and others. However, for purposes of providing a simpler and effective comparison between alternative route proposals that is both visual and quantifiable (within certain limitations that will be discussed in this letter), MPCA staff has elected to compare the routes based on access to potential leak sites for purposes of containment of spills and possible clean up.

To minimize variables and subjectivity for this analysis, MPCA staff opted to identify, using ArcGIS technology, water body crossings that had neither road or traversable upland features within 250 feet of flowages of water (heavily forested areas are not considered for this purpose to be traversable, as trees would have to be removed before equipment could be brought in), or portions of larger wetland complexes that fell within a 2,000 foot buffer of the point where the proposed pipeline route was to cross a stream, lake, or wetland. The 250-foot distance from access point to flowage is somewhat arbitrary. MPCA staff conferred with contractors and engineers who specialize in road construction, and most felt that in a best-case scenario, with aggregate and equipment available, a 250-foot road into a bog or wetland would be constructed within 24 hours. Thus, for purposes of this analysis, MPCA staff

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assumed that it is possible to build an access road to reach areas where containment of a spill might be accomplished before the spilled product covers an area large enough that cleanup would be highly destructive to a sensitive environment, or impossible. Similarly, there is no regulatory basis for choosing the 2,000 foot buffer distance, other than it is a significant distance for oil impacts to occur over any surface water and easy to apply consistently statewide. It is a distance that for most people would be easy to visualize, yet small enough to create a fair comparison between routes. These numbers provide a basis for comparisons between routes and have little significance beyond that. However, if these criteria are used consistently for all proposed routes, it does provide a basis to compare the potential for each route to cause considerable environmental damage in the event of a release.

There are some factors to consider that fall beyond the scope of this comparison. For example, the water crossings proposed for the Sandpiper route are frequently streams or flowages with connectivity to other water bodies downstream. By contrast, water body crossings on the Northern route frequently involve very large wetland complexes rather than smaller, faster moving flowages. The area needed to access might be much greater, but the oil may move more slowly in such areas. Counting becomes a bit more difficult here as well, because it is difficult to establish criteria for counting "crossings" that is comparable to the different features observed in the Sandpiper route. In most cases, MDNR catchment flow lines were used to distinguish one crossing point from another.

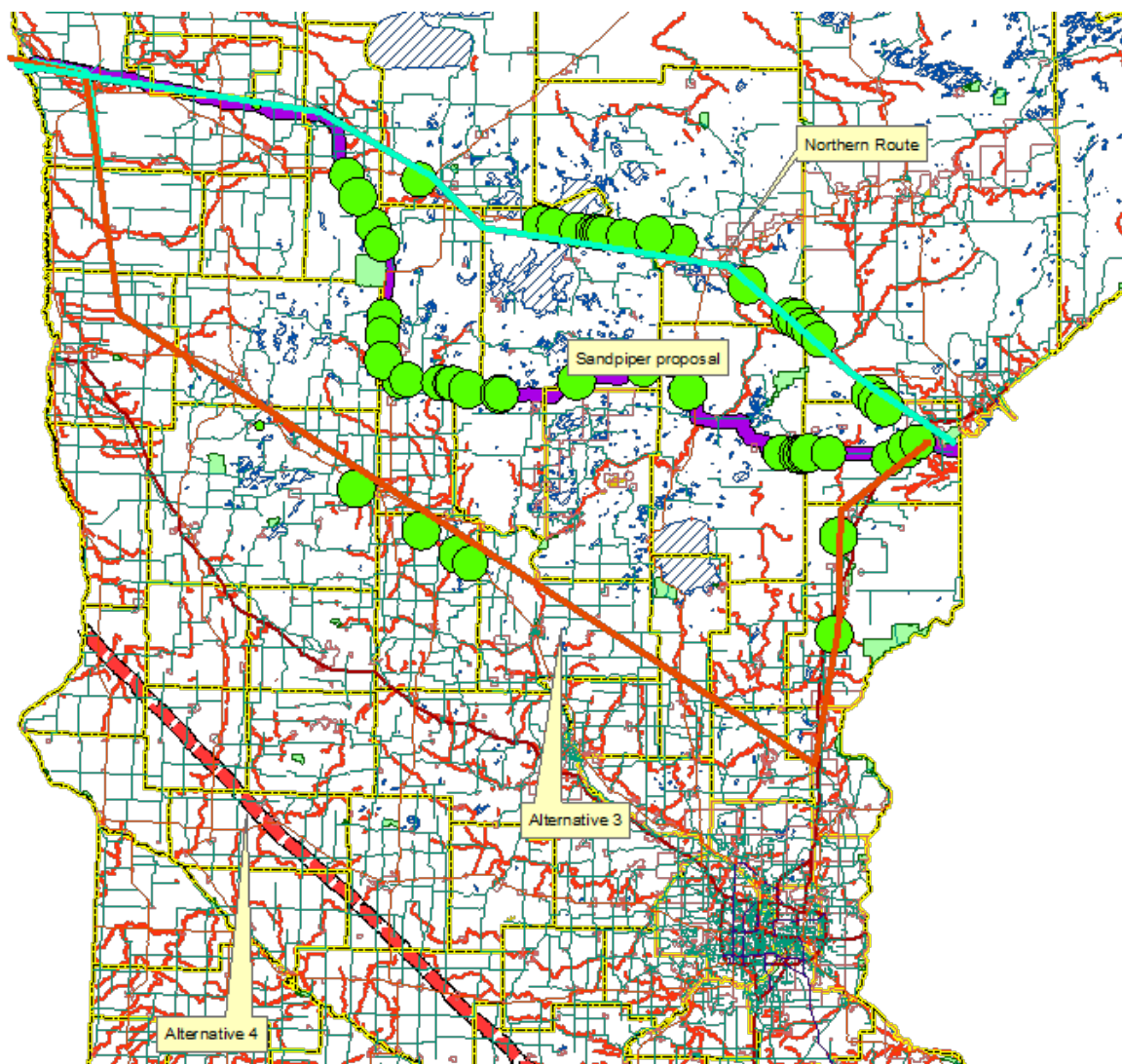
In any case, the method used as a basis for comparison by MPCA staff does provide quantifiable data to analyze the proposed routes from a meaningful perspective: Which route proposals pose the greatest risk to create destructive and expensive containment and cleanup operations in the event of a spill?

MPCA staff compared four proposed routes in their entirety (see Figure A below). The four proposed routes that were compared were (1) The currently proposed Sandpiper route; (2) The "Northern" route, used by Enbridge for previous projects and which has been suggested as an alternative by other entities; (3) The "Alternative 3" route which was identified as a possible alternative by MPCA staff; and (4) The southern "Alternative 4" route which exits the state at the Iowa border and would be required to tie into the Enbridge infrastructure either in another state, or to circle around outside of Minnesota to end at the Superior Terminal. The fourth route was suggested as an alternative by a citizen group.

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**Figure A-The green circles mark points where MPCA staff have identified access concerns. Approximate locations of the four primarily examined proposals are also identified.**

Any water body crossing, especially streams, rivers, or flowages of any kind that can carry oil downstream, pose the risk of creating large scale environmental damage in the event of a release. If possible, it is best to avoid crossing surface waters altogether with oil pipelines in order to minimize this risk. However, if a water body, bog or otherwise sensitive area is to be crossed, then serious consideration should be given to whether the site can be accessed quickly in the event of a release to contain the product, minimize migration of product into surface waters, soils and groundwater, and perform clean-up operations. In situations where roads have to be constructed to access a spill, the act of constructing the road, excavating and clearing vegetation can all exacerbate the damage that the spill itself created. Additionally, placement of flow control valves in strategic locations along/near sensitive areas may help to minimize backflow of product out of a fractured line into those areas.

A difficulty with aerial photograph analysis as opposed to field surveying of water crossings is that it is difficult to determine whether a stream or wetland is permanently, seasonally, or intermittently flooded. MPCA staff relied on National Wetland Inventory maps to identify wetland types, which will to

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some extent help to determine the likelihood of the wetland having open water at the time of a leak, which would allow transport of released oil to occur more quickly, or merely be in a state of saturated soil, which would result in easier and faster containment and cleanup of a spill. The results of the MPCA staff analysis are as follows:

### Sandpiper Route

The proposed Sandpiper route crosses 28 water bodies for which there is no access for possible containment within 2,000 linear feet downstream of the proposed pipe crossing. Of these 28 water body crossings, one is a stream to lake system, 12 are wetland complexes, 10 are streams that flow to wetland systems, and five are streams that flow to areas with stands of wild rice. Below is a list of the water body crossings for this route option, followed by example Figures B and C:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Sandpiper Route	Mahtowa	T47 R18W S8	Moose Horn River
Sandpiper Route	Salo	T47 R22W S1	Headwaters Sandy River
Sandpiper Route	Salo	T47 R22W S2	Headwaters Sandy River
Sandpiper Route	Automba	T47 R21W S6	West Branch River
Sandpiper Route	Salo	T47 R22W S6	Headwaters Sandy River
Sandpiper Route	Automba	T47 R21W S6	West Branch River
Sandpiper Route	Automba	T47 R21W S1	Heikkila Creek-Kettle River
Sandpiper Route	Atkinson	T48 R18W S36	Blackhoof River
Sandpiper Route	Copley	T147 R37W S34	Walker Brook
Sandpiper Route	Moose Creek	T146 R36W S29	Upper Rice Lake-Wild Rice River
Sandpiper Route	Bull Moose	T138 R31W S12	Headwaters South Fork Pine River
Sandpiper Route	Bull Moose	T138 R31W S11	Headwaters South Fork Pine River
Sandpiper Route	Bull Moose	T138 R31W S11	Headwaters South Fork Pine River
Sandpiper Route	Arago	T141 R35W S17	Hay Creek
Sandpiper Route	Northwest Aitkin	T50 R26W S22	White Elk Creek
Sandpiper Route	McKinley	T138 R32W S3	Goose Lake-Big Swamp Creek
Sandpiper Route	McKinley	T138 R32W S4	Goose Lake-Big Swamp Creek
Sandpiper Route	Crow Wing Lake	T139 R33W S36	Burgen Lake
Sandpiper Route	Crow Wing Lake	T139 R33W S36	Burgen Lake
Sandpiper Route	Crow Wing Lake	T139 R33W S33	Town of Huntersville-Crow Wing River
Sandpiper Route	Straight River	T139 R35W S36	Blueberry Lake-Shell River
Sandpiper Route	Blind Lake	T139 R28W S26	Arrowhead Lake
Sandpiper Route	Hubbard	T139 R34W S31	Shell River
Sandpiper Route	Beulah	T139 R25W S9	Moose River
Sandpiper Route	Straight River	T139 R35W S6	Straight River
Sandpiper Route	Bear Creek	T145 R36W S35	Gill Lake-Mississippi River
Sandpiper Route	Todd	T140 R35W S6	Fishhook Lake
Sandpiper Route	Lake Hattie	T144 R35W S19	LaSalle Lake-Mississippi River

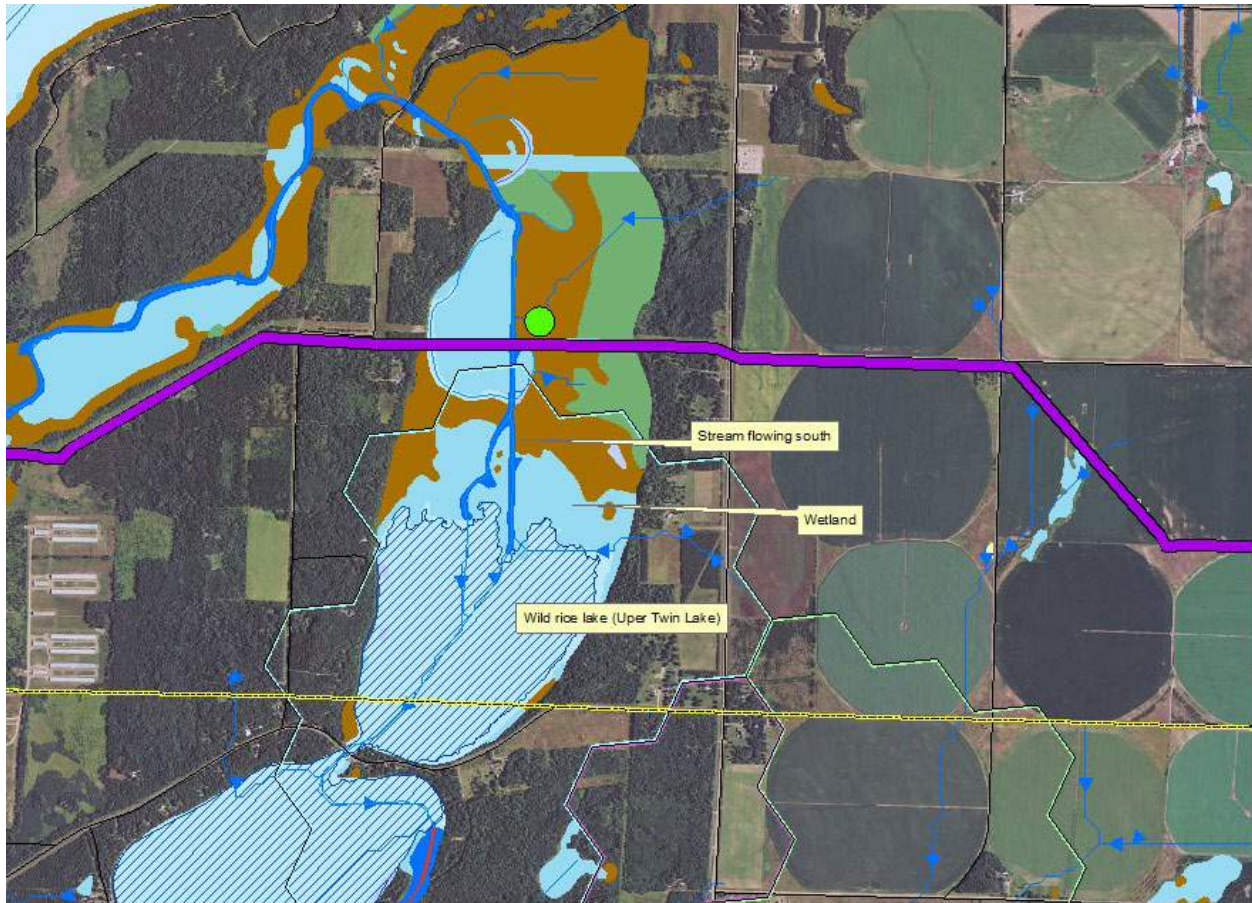


Figure B - This shows an example of a proposed crossing point over surface water that flows south (see arrows on dark blue flowage line) through a wetland complex and into a wild rice lake (the Twin Lakes near Menahga and Park Rapids, MN). However, to determine accessibility, the wetland identification layer must be turned off so that land features can be examined as in Figure C below. The purple line is the proposed Sandpiper route. (Scale 1:24,001)



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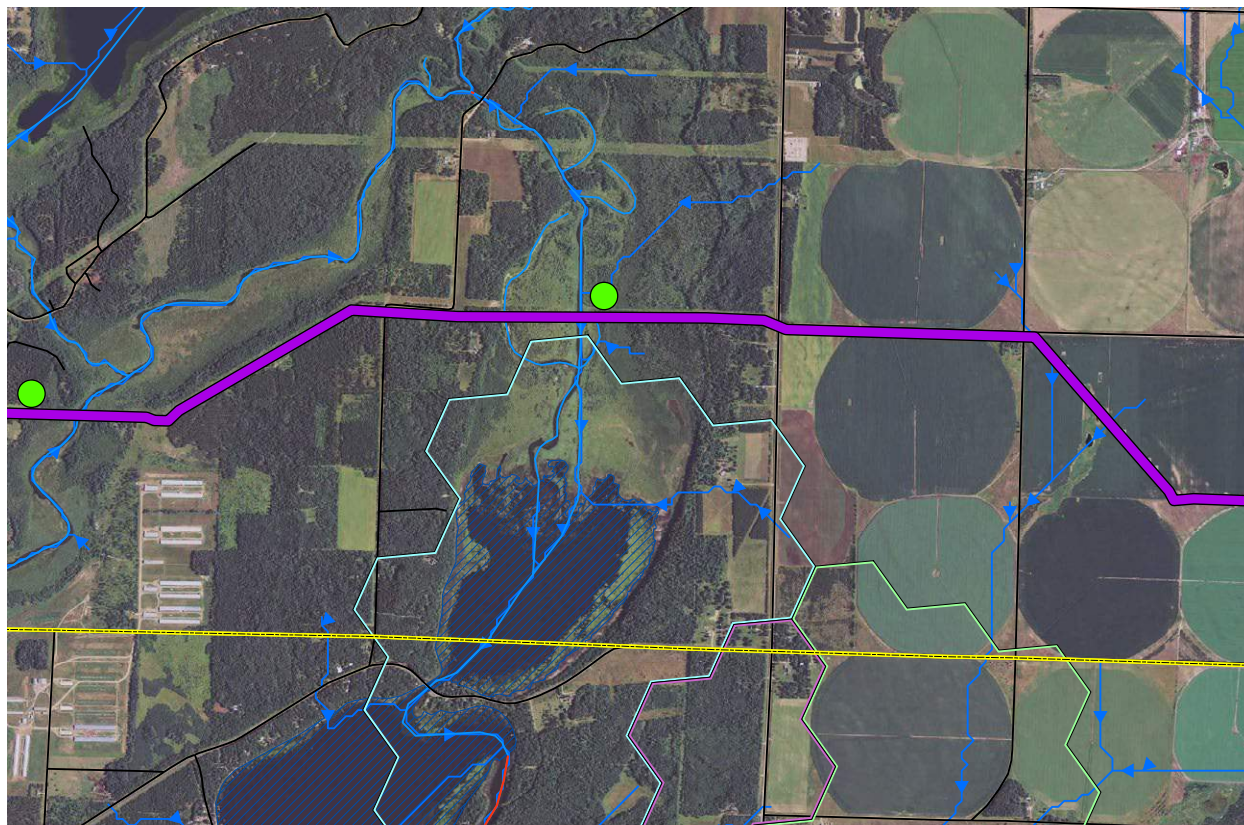


Figure C-Here, the wetland layer is turned off so that the landscape can be examined for accessibility. In this instance, there are no roads or open farmland to bring containment or clean-up equipment within 1,500 feet of the flowage that would potentially deliver leaked crude oil into the upper most of the Twin Lakes. The curvy black line between the lakes is a road, and the first good point of access. This road is 6,700 feet from the pipeline crossing, although it is possible that boats or barges could access the lake from the farm fields to the right (east) or the road (black line) to the left and contain a spill within the lake. (Scale 1:24,001)

#### Hill Route

The "Hill route alternative," suggested by the MDNR as a way to avoid features of concern, would not differ from the proposed Sandpiper route based on the criteria discussed here.

#### Northern Route

The Northern route, which parallels the path of the Alberta Clipper project, crosses 20 water bodies for which there is no access within 2,000 feet downstream of the location where crossings would occur if the route were followed. Along the Northern route, water bodies without access to potential leak sites within 2,000 feet include one stream that flows to a lake, 14 wetland complexes, five stream/wetland systems, and two streams or wetlands that flow to areas with stands of wild rice or wetlands. Below is a list of the water body crossings for this route option, followed by example Figures D and E:

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NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Northern Route	Pot Shot Lake	T52 R21W S8	Floodwood River
Northern Route	Northeast Aitkin	T52 R22W S1	West Branch Floodwood River
Northern Route	Wawina	T53 R22W S27	West Branch Floodwood River
Northern Route	Deer Lake	T56 R26W S29	Mississippi River
Northern Route	Bowstring Lake	T144 R26W S3	Little Winnibigoshish Lake-Miss. River
Northern Route	Morse	T145 R25W S35	White Oak Lake-Mississippi River
Northern Route	North Cass	T145 R27W S35	Sixmile Brook
Northern Route	North Cass	T145 R27W S34	Sixmile Brook
Northern Route	North Cass	T145 R27W S34	Sixmile Brook
Northern Route	North Cass	T145 R27W S33	Sixmile Brook
Northern Route	North Cass	T145 R28W S26	Sixmile Brook
Northern Route	Wawina	T53 R22W S28	West Branch Floodwood River
Northern Route	Blackberry	T54 R24W S13	Blueberry Lake-Mississippi River
Northern Route	North Cass	T145 R29W S24	Portage Creek
Northern Route	North Cass	T145 R29W S20	Portage Creek
Northern Route	Wilton	T147 R34W S34	Grant Creek
Northern Route	Pot Shot Lake	T52 R21W S22	Floodwood River
Northern Route	Perch Lake	T49 R18W S7	Perch Lake
Northern Route	North Carlton	T49 R19W S1	Stoney Brook
Northern Route	Arrowhead	T50 R19W S27	Bog Lake

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Figure D-With NWI wetland layer turned on, one can see wetland extending well beyond the 2,000 foot buffer at this crossing along the "Northern" route. The purple is bog, the green is forested wetland. In Figure E below the wetland layer is turned off so that accessibility to a potential leak here can be determined. (Scale 1:24,001)

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Figure E- With the wetland identifying layers turned off, one can see that there are no roads or upland areas from which to access potential leak sites at this crossing. There is a possible access point identified to the southwest of the pipeline crossing, but containment equipment would have to be strung across over 3,000 feet of wetland as it flows into the lake to contain all of a release as it flows to the south. (Scale 1:24,001)

### Alternative 3 Route

The Alternative 3 route corridor, which was referenced earlier in the letter, begins at the same western point that both the Sandpiper and Northern routes do; however, roughly 20 miles west of the North Dakota border it veers south and follows an existing (possibly abandoned) pipeline south and then southwest to roughly five miles west of North Branch, Minnesota, where it then follows another corridor in a northerly direction, where it eventually intersects with the proposed Sandpiper route just west of Superior, Wisconsin. This route has 7 water body crossings with no access within 2,000 feet downstream of the pipe crossing; however, these water bodies are often smaller wetland complexes than are seen on either the Sandpiper route or the Northern route. These crossings without access within 2,000 feet

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include two wetland complexes, four stream/wetland systems, and one area with stands of wild rice. Below is a list of the water body crossings for this route option, followed by example Figures F and G:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Alternate Route 3	Mission Creek	T40 R21W S12	Mission Creek
Alternate Route 3	Fawn Lake	T132 R32W S34	Lower Turtle Creek
Alternate Route 3	Fawn Lake	T132 R32W S19	Fish Trap Creek
Alternate Route 3	Kettle River	T44 R20W S8	City of Willow River-Kettle River
Alternate Route 3	Bartlett	T133 R34W S23	Moran Creek
Alternate Route 3	Compton	T134 R36W S5	Deer Creek-Leaf River
Alternate Route 3	Twin Lakes	T48 R17W S21	Blackhoof River

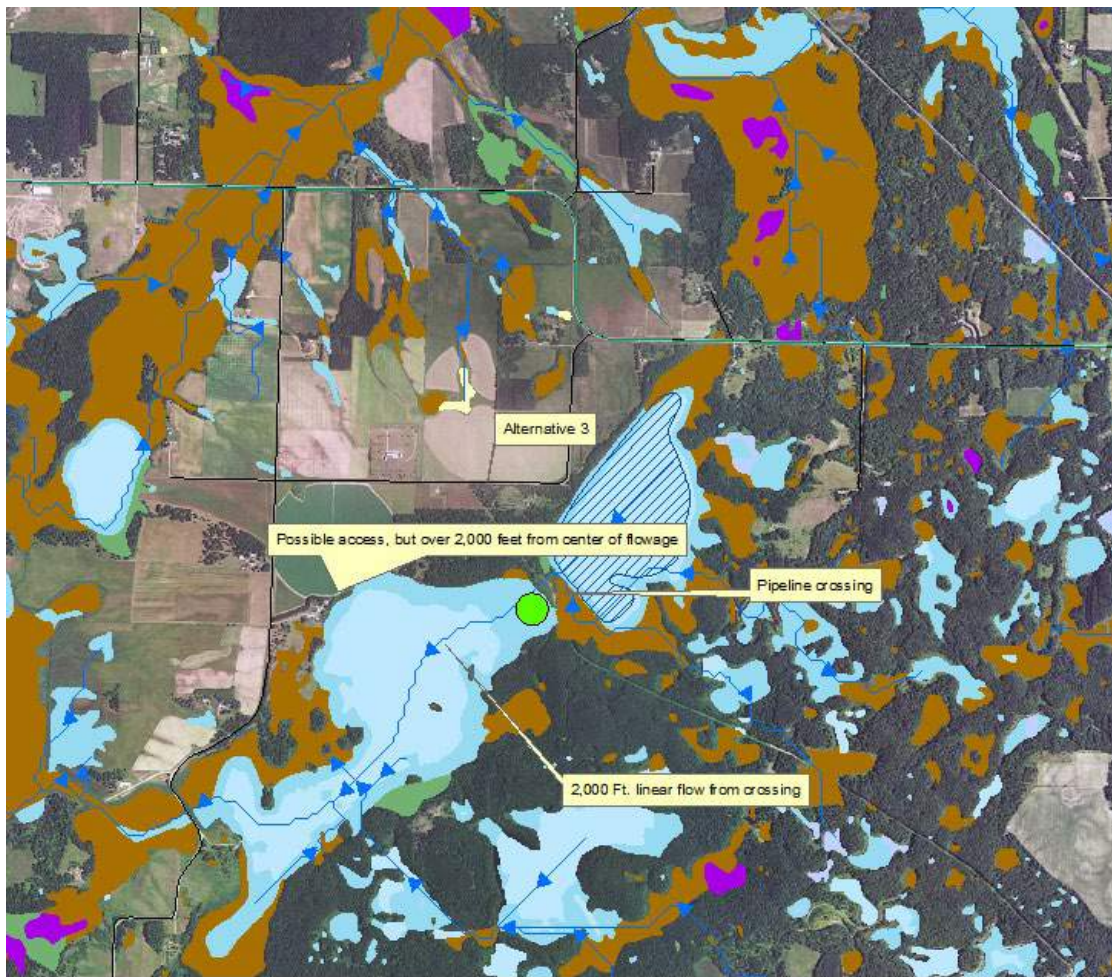


Figure F - Wetland layer identifies an open water wetland south of the pipe crossing that would likely receive oil from a leak. Wetland layer turned off in Figure G below. (Scale 1:24,001)

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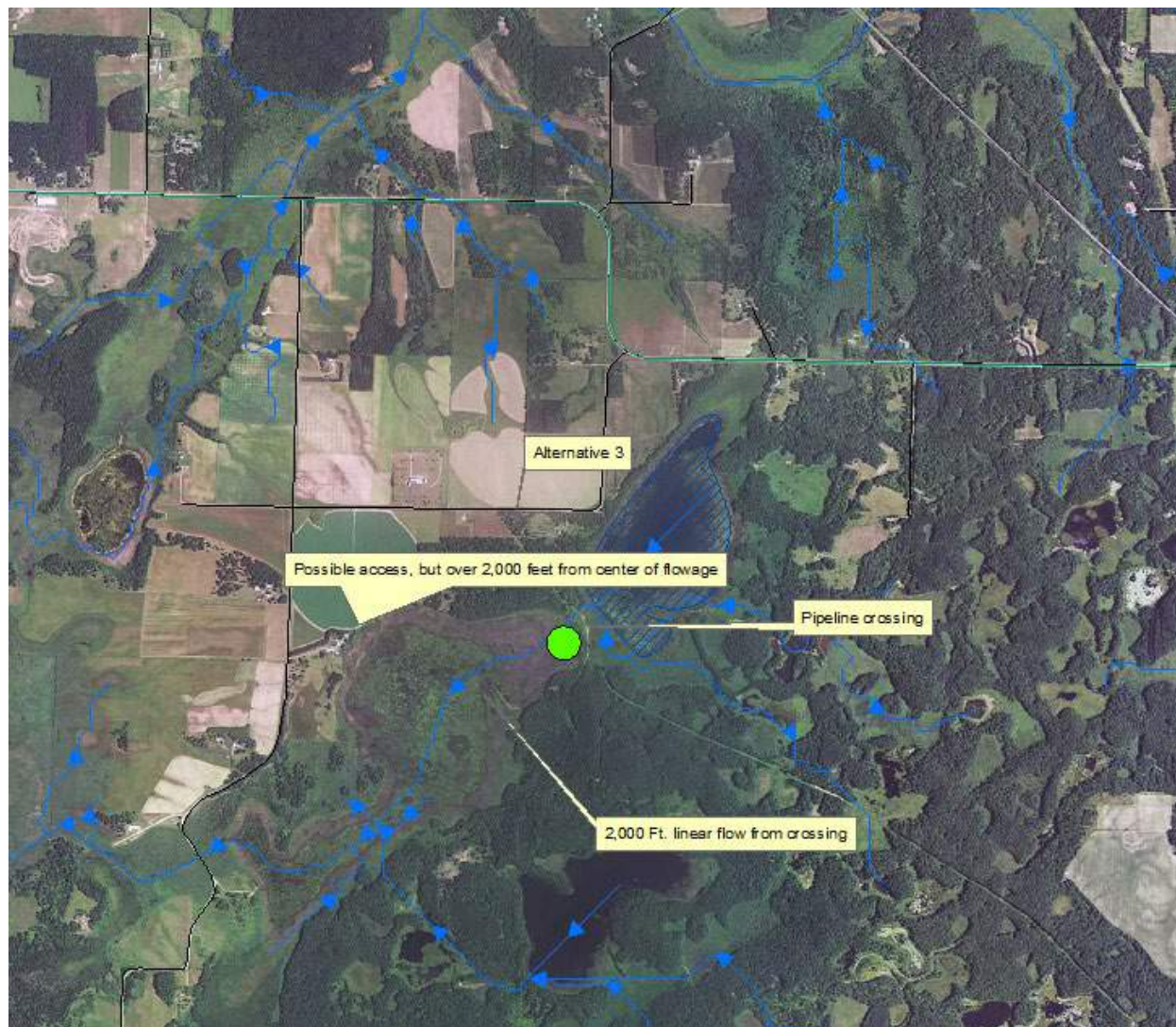


Figure G-With wetland layer turned off, one can see that the nearest access to the main stem of the flowage is roughly 2,000 feet to the west. If the wetland is traversable by boat or barge, which is possible given the wetland type (Type 3/5 shallow marsh and open water) then it is possible that access to material could be gained within the 2,000 foot buffer here. (Scale 1:24,001)

#### Alternative 4 Route

The Alternative 4 corridor enters the state in Traverse County just west of Wheaton, Minnesota, and runs to a southeast bearing until it exits the state south of Austin, Minnesota. A pipeline along this route would cross no water bodies lacking access within 2,000 feet of a potential leak site in surface water. There are very few water bodies crossed by this route in general over the proposed route.

#### National Hydrography Dataset

Even if access issues are taken out of the equation, the proposed Sandpiper route does not fare well in comparisons with alternative proposals based on examination of the National Hydrography Dataset

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(NHD) layer. Using the NHD layer, the proposed Sandpiper route would cross 20 water bodies, the Northern route would cross 10, the Alternative 3 route would cross 12, and the Alternative 4 route would cross 1 water body within the state of Minnesota. The NHD layer obviously does not identify all water bodies that are being crossed; however, it does identify water bodies that are part of a connected network of surface waters which may also be a good gauge of potential environmental impact if an incident were to occur.

Notably, the two routes in this analysis that crossed the fewest water bodies and put water resources at the lowest risk for environmental damage both aligned away from the Clearbrook terminal. Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest concentration of lakes, streams, and open-water wetlands in the state. Any route proposed out of Clearbrook, either south or east will cross dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

#### Summary of Route Analysis

There are numerous pipeline corridors that currently exist in Minnesota. Of those, there are several that cross far fewer water bodies and have better potential for access in the event of a release than the current Sandpiper proposal. MPCA staff examined three existing corridors in addition to the proposed Sandpiper route. While performing risk assessment, the current use of the corridors in question should also be considered, as much of the proposed Sandpiper route follows a corridor in which three other oil pipelines currently exist. Thus, not just one pipeline would be crossing sensitive water bodies with limited access, but four. The likelihood of an incident in which crude oil product is released is thus greater than what a single pipeline would entail. This is also true of the Northern route, in which numerous pipelines carrying crude oil exist. What has happened in the past with regard to location of pipeline routes is from this perspective unfortunate; MPCA staff believes that past routes have crossed too many water bodies in inaccessible areas, and the risk of large-scale impact as a result of a release incident is significant and ongoing. As this analysis shows, options posing a lesser risk to surface waters may be available.

Of the four possible routes that MPCA staff has examined, the proposed Sandpiper route and the previously followed Northern route show a significantly higher potential for environmental damage than either the Alternative 3 or Alternative 4 routes. It is also possible that an as-yet unexplored route could also score well relative to the Sandpiper proposal. The analysis of the Alternative 4 route is incomplete in that possible impacts outside of the Minnesota state boundaries were not looked at, so the surface waters avoided or protected by this route are only located in Minnesota per this analysis. It is also acknowledged that the MPCA staff analysis focused on the potential water quality and natural resource aspects of the project and not on other types of resources or land uses.

Nevertheless, the criteria adopted for this analysis show a clear difference in potential risk to surface waters between the Sandpiper proposal and other possible routes, and that in the event of a significant

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oil release, the Sandpiper route proposal has a significantly greater potential for large-scale environmental damage than other route proposals.

It is important to note that the construction of accesses through sensitive "no access" areas as a preventative measure can also create environmental hazards and damages and cannot be assumed to be an acceptable remedy. Rather, route proposals put forth now and in the future should take these factors into consideration and avoid continuing to cross surface waters at these locations. The minimization of surface water crossings in any location should become a priority for consideration when planning a route to construct a pipeline.

### **Cumulative Impacts**

The NEPA, Title 40, C.F.R. 1508.7, defines cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

The cumulative impacts review in the CEA should include current and proposed transmission line corridors, highway construction, water delivery systems, landfills, railroads, power generations plants, feedlots, and mine and mineral extraction sites which have the potential to interact with the proposed project. The CEA should also review the potential for significant cumulative effects related to past, present and future projects in the Duluth/Superior area involving increased transmission, storage, processing or refining activities, including the expansion of the Calumet Superior Refining facility in Superior, Wisconsin, or transportation of oil, fuels or products refined or manufactured from oil. Areas in which such impacts could occur include air quality in Duluth and the surrounding area in Minnesota, water quality as related to new or increased discharges or shipping activities, and transportation whether by truck, rail or ships.

The CEA should identify the impacts of past incidents associated with pipeline construction and operation, past incidents involving two or more associated utility lines, accidents or emergencies which may arise due to an unforeseen chain of events during the operational life of the pipeline, and effects within the project limits, and local and regional effects. Cumulative impacts may occur to:

- Human activities, such as recreation, agriculture and loss of prime farmland
- Wildlife including migratory birds and aquatic species
- Habitat and alterations to terrestrial vegetation
- Endangered species
- Air quality, including dust (particulate matter) and visual impacts
- Land values
- Watersheds
- Local and state socioeconomics

According to data provided by the Pipeline and Hazardous Materials Safety Administration (PHMSA), to date, there are 2,408 miles of crude oil pipeline in the state of Minnesota. More are planned within the next few years. Much of this infrastructure exists in corridors shared by several other pipelines carrying liquefied petroleum gas, natural gas, diluent for tar sands oil, refined petroleum product and other



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hazardous materials. In total, there are 10,475 miles of pipeline through the state. According to PHMSA, over the last 20 years, there has been an average of 14 spills from pipelines per year in Minnesota, an average of 1,812 barrels of hazardous liquids spilled per year in Minnesota, an average of 1,093 net barrels lost per year in Minnesota, and an average of \$3,135,572 of property damage annually in Minnesota. Five lives have been lost as a result of pipeline incidents.

The MPCA has numerous concerns about the number of pipelines planned to use the same corridors. With each water body crossed by a pipeline carrying crude oil, the risk of a major incident increases. A cursory review of the PHMSA web site identifies apparent causes of pipeline failure to include: incorrect operation, equipment failure, internal and external corrosion, third party damage (excavation), construction damage, material failure (pipe, fitting, weld), weld leak, and other unknown causes. For example, at the site of the Enbridge pipeline release in Marshall, Michigan, the National Transportation Safety Board found "that deficiencies in Enbridge's integrity management (IM) program contributed to the release of hazardous liquid..." (Federal Register, Volume 79, No. 87, Tuesday, May 6, 2014 (25990 – 25994)). See also Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010 (NTSB/PAR-12/01, PB2012-916501). Ultimately, the perspective should not be if a pipeline fails, but how will a release be mitigated when a failure occurs and at any given location (and the environmental susceptibility of that area to a release).

As explained above, MPCA examination of the proposed Sandpiper route and the previously used Northern route (Alberta Clipper) shows that significantly more open water bodies are crossed by the pipelines in these corridors than alternative routes. Far more of these crossings have no available access within a 2,000 foot buffer, meaning that release incidents are more likely to impact surface waters within that 2,000 buffer. Both the Sandpiper and Alberta Clipper routes are corridors for numerous crude oil pipelines; consequently, these routes are more vulnerable and less able to properly mitigate damage to aquatic environments. Whereas oil does travel through soils and overland, it travels significantly farther in aquatic environments.

Pipeline construction will involve soil excavation, vegetation removal, the crossing of water bodies, and the alteration or loss of wildlife habitat. These activities and the creation of new corridors can result in forest fragmentation affecting numerous species of wildlife that require expanses of undisturbed forest. Wetland perches may be broken causing alteration of natural hydrology in wetland areas, and stream geomorphology can be altered by damaging banks or stirring up stream bottoms. Herbicides used to control vegetation in pipeline corridors may adversely affect pollinators, particularly honeybees, resulting in hidden impacts that are difficult to trace, but nonetheless exist.

The construction, operation, maintenance, incidents and repairs associated with crude oil pipelines have been accompanied by significant environmental impacts. With more proposals in the works, more cumulative impacts can be expected to occur. Therefore, concerted effort is needed to take a close look at and carefully analyze the creation of common routes and corridors for pipeline projects where the risks of impacts to the environmental and human health can be minimized. The routes that have been used in the past pose substantial risks as noted above. Continuing to open more corridors will increase these risks and impacts. The MPCA would support and participate in a joint effort by state agencies to begin examining the feasibility of such a corridor, both for the purpose of expediting approval of future proposals and minimizing the potential for environmental impacts. A fresh look at the routing of energy transportation projects from a larger and more comprehensive perspective has the potential to make a

June 24, 2014

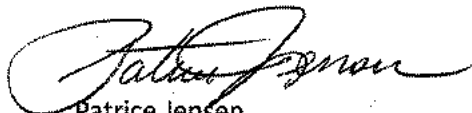
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significant contribution to streamlining the review and permitting processes as well as preventing and minimizing cumulative impacts.

**Conclusion**

It is requested that the comments provided in this letter and MPCA's letter dated April 4, 2014, be entered into the record to be addressed in the Draft CEA. We continue to look forward to assisting the Department of Commerce, as desired, during the preparation of the CEA for this project and its subsequent review upon its release. Through this process, the MPCA seeks to obtain further additional information to facilitate the MPCA staff review of the Project, well in advance of the time a decisions on the required MPCA authorizations are needed to commence construction. Ultimately, it is the responsibility of North Dakota Pipeline Company LLC to secure any required permits and to comply with any requisite permit conditions. If you have any questions, please contact me at 651-757-2465.

Sincerely,



Patrice Jensen  
Planner Principal  
Environmental Review  
Resource Management and Assistance Division

PJ:bt

- cc: Jamie Schrenzel, MDNR  
Desiree Morningstar, U.S. Army Corps of Engineers  
Sara Ploetz, Enbridge  
Reed Larson, MPCA  
Bill Sierks, MPCA  
Laurel Mezner, MPCA  
Jim Courneya, MPCA  
Brian Livingston, MPCA  
Jeff Udd, MPCA  
Steve Lee, MPCA  
Doreen Fier-Tucker, MPCA  
Pat Carey, MPCA  
Catherine Neuschler, MPCA  
Craig Affeldt, MPCA



## Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

August 6, 2014

Mr. Burl Haar, Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

Dear Mr. Haar:

RE: Enbridge Sandpiper Pipeline Project, Docket No PL 6668/PPL-13-474

The Minnesota Pollution Control Agency (MPCA) has reviewed the comments and recommendations submitted by the Department of Commerce (DOC) on July 16, 2014, which will be considered by the Public Utilities Commission (Commission) at the August 7, 2014, hearing for the Enbridge Sandpiper Pipeline project. The MPCA offers the following comments on the project and the DOC's July 16, 2014, recommendations.

The recent boom in the production of oil and gas in North Dakota and surrounding areas has brought about an increase in the number of planned and proposed projects in Minnesota for the transportation, storage, and processing of these resources and their related products and uses. This activity has increased citizen and Agency interest in the amount and quality of information available to adequately assess the individual and cumulative environmental impacts of these projects and to fully inform decision-making processes.

Many alternatives to the proposed Sandpiper project and route have been suggested in the routing (PPL-13-474) and certificate of need (CN-13-473) proceedings, including rail transport, trucking, and numerous pipeline routes. The Commission will determine which alternatives are to be addressed in greater detail as the environmental review, certificate of need, and permitting processes move forward.

Given the high potential of additional pipelines and replacement or upgrading of existing pipelines in the near future, and within the same corridors, it is critical that the current effort consider multiple alternatives, including both route and system alternatives. For the reasons outlined below, limiting the alternatives to route options alone at this stage would unnecessarily narrow the scope of project options to reduce environmental and public health risks.

In our comments, the MPCA has suggested both route and system alternatives; these are discussed in the DOC's July 16, 2014, filing. I am concerned that the system alternative recommended for consideration by the MPCA may not be evaluated in these proceedings, since it does not include the Clearbrook terminal. The DOC evaluated the MPCA's system alternative, SA-03, and developed a connector segment to Clearbrook that would convert SA-03 into a route alternative. The MPCA supports inclusion of the SA-03 route with the connector segment developed by DOC as a less environmentally harmful route alternative than the proposer's route.

Mr. Burl Haar, Executive Secretary

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August 6, 2014

The MPCA's view is that the environmental impacts of system alternatives need to be considered as well as route alternatives. A system alternative that will transport oil to an alternative terminal with significantly less environmental harm should be evaluated in these proceedings.

My understanding is that system alternatives are considered in the Certificate of Need (CN) proceeding for this project. I also understand that DOC conducts environmental review of system alternatives in High Voltage Transmission Line certificate of need proceedings in the form of an Environmental Report (ER), but that this review is not conducted for pipeline certificate of need proceedings. The MPCA respectfully requests that the Commission request the DOC to prepare an ER-type review of alternatives to the project, including SA-03 as originally proposed by the MPCA without the connector segment to Clearbrook, for introduction into the CN proceeding. This position is based on MPCA's understanding as follows:

1. The project purpose can be met without constructing new storage capacity in Clearbrook. If the new terminal were to be built at a more westerly location, such as Crookston, a 75-mile long pipeline to Clearbrook could be constructed for the purpose of sending the oil that Enbridge is contractually obligated to send through Clearbrook (for transport to St. Paul refineries), while the remainder of the Bakken crude could be sent via a less environmentally harmful route well to the south of the sensitive water resources, and then on to the Superior, Wisconsin terminal.
2. Locating terminal facilities near Crookston, or at another site closer to the border of North Dakota, could offer other pipeline routes as viable alternatives, such as the proposed "System Alternatives" identified in the July 16, 2014, DOC recommendations. A terminal closer to the Minnesota/North Dakota border could be the point of origination for future pipelines that would travel to the south and avoid the potential threat to sensitive water resources that the MPCA has identified as being associated with the currently proposed Sandpiper route.

Thank you for consideration of our request.

Sincerely,



John Linc Stine  
Commissioner

JLS:bt

January 23, 2015

The Honorable Eric Lipman  
Minnesota Office of Administrative Hearings  
600 North Robert Street  
P.O. Box 64620  
St. Paul, MN 55164-0620

RE: In the Matter of the Application of North Dakota Pipeline Company LLC for a  
Certificate of Need for the Sandpiper Pipeline Project in Minnesota  
MPUC Docket No. PL6668/CN-13-473  
OAH Docket No. 8-2500-31260

Dear Judge Lipman:

The Minnesota Pollution Control Agency (MPCA) submits the following comments for consideration by the Administrative Law Judge (Judge) in making recommendations to the Public Utilities Commission (Commission) in this matter. The MPCA's comments provide information addressing several of the criteria set forth in Minn. Rule 7853.0130 for making a determination on a certificate of need for the Sandpiper Pipeline Project (SA-Applicant) proposed by North Dakota Pipeline Company ("NDPC" or "Applicant"). The MPCA respectfully requests that if a determination of need is reached in this proceeding, the certificate of need be conditionally granted contingent upon suitable modification of SA-Applicant to protect and avoid high quality natural and environmental resources, and the inclusion in the Route Proceeding, Docket No. CN-13-474, of SA-03 and any other System Alternative that meets the identified need, pursuant to the Commission's authority under Minn. Rule 7853.0800. The MPCA will gladly provide additional information or comments that the Judge may find helpful in the course of this proceeding.

**A. The MPCA's comments address four of the criteria required under Minn. Rule 7853.0130 for a determination on a certificate of need.**

Minn. Rule 7853.0100 requires evaluation of all applicable and pertinent factors listed under each of the criteria set forth in Rule 7853.0130 and a specific written finding with respect to each of the criteria. Minn. Rule 7853.0130 states that a certificate of need shall be granted if all the listed determinations can be made. However, if one or more of those determinations cannot be met, a certificate of need may be denied, or conditionally granted subject to modification, under Minn. Rule 7853.0800.

The MPCA is providing comments that address the determinations required under Rule 7853.0130.B (2); 7853.0130.B (3); 7853.0130.C (2); and 7853.0130.C (3), which state:

- 7853.0130.B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering: . . .
  - (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;
  - (3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and . . . .
  
- 7853.0130.C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering: . . .
  - (2) the effects of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;
  - (3) the effects of the proposed facility or a suitable modification of it, in inducing future development.

The MPCA comments will address each of the criteria mentioned above and associated listed factors.

**B. SA-03 is a reasonable and prudent alternative to the Applicant’s facility (SA-Applicant), since the respective costs of SA-Applicant and SA-03 and of oil to be supplied by SA-Applicant and by SA-03 are not significantly different. Minn. Rule 7853.0130.B(2).**

Financial impacts and comparative costs are among the factors to be evaluated in determining whether the criteria in Minn. Rule 7853.0130.B are met. Since MPCA submitted its comments dated August 21, 2014 to the Public Utilities Commission,<sup>1</sup> additional relevant testimony have been submitted in this docket. This included the direct testimony of economist Adam Heinen of the Department of Commerce (Doc. ID 201411-104761-03 (“Heinen Direct”). Mr. Heinen stated his expert opinion that System Alternative SA-03, as proposed by the MPCA, would meet the need of the project if as also proposed by MPCA, the Clearbrook terminal location was moved westward to the Crookston area or another location closer to the North Dakota border. (Heinen Direct, p. 75,) Mr. Heinen also indicated that moving the terminal location could increase the cost of constructing the pipeline, and discussed Applicant’s estimate of the cost increase. (Heinen Direct, 75-76). Mr. Heinen then stated in his opinion that any apparent higher costs of SA-03 based on Applicant’s analysis were insignificant and unlikely to impact retail prices and that the Applicant had not shown that SA-03 was an unreasonable alternative to meet the need of the proposed project. (Heinen Direct, pp. 77-78)

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<sup>1</sup> See PUC Docket Filing [\\_20148-102458-02 and 20148-102458-04](#)

Mr. Heinen reinforced his direct testimony when he filed rebuttal testimony addressing SA-03. Mr. Heinen affirmed that SA-03 appeared to be a reasonable alternative to meet the need for this project. (Heinen Rebuttal, p. 7) (Doc. No. 20151-105968-01). This testimony supports the finding that under Minn. Rule 7853.0130.B(2), based on comparative cost, SA-03 is at least a reasonable and prudent alternative. However, comparative effects on natural environments, i.e., potential environmental and natural resource impacts as discussed in the following sections, appear to make SA-03 “a more reasonable and prudent alternative” under Minn. Rule 7853.0130.B(3).

In addition to direct costs of construction and operation, the costs considered under Rule 7853.0130.B(2) should include an evaluation of whether a system alternative such as SA-03 is a more reasonable alternative to SA-Applicant because of a reduced risk of a costly spill to a sensitive environmental area. An Alternative that avoids or impacts fewer sensitive ecosystems and water bodies than SA-Applicant will have a smaller likelihood of incurring significant response costs. As documented by the U.S. Environmental Agency (USEPA), it costs considerably more to restore or rehabilitate water quality than to protect it.<sup>2</sup> The areas of the state traversed by the SA-Applicant have waters and watersheds that are currently subject to protection in the state’s “Watershed Restoration and Protection Strategy” program,<sup>3</sup> financed through the Clean Water Fund and aided by significant volunteer participation of Minnesota citizens. By keeping these waters as clean as possible before they become impaired, extensive costs of restoring waters to state standards can be avoided. Location of oil pipelines in these areas place their pristine waters at risk, and also place potentially millions of dollars in state and federal funds allocated for protection of these areas at risk.

When evaluating spill response costs, the following factors would make one corridor a better choice than another in minimizing the potential for costly spills or accidental discharges: fewer crossings of flowing water; fewer adjacent water bodies; quality of those waters; presence of especially sensitive areas or habitats or species or uses; better access to downstream oiled areas; tighter soils; and closer and more equipped and prepared responders. The MPCA applies these factors in comparing SA-Applicant with SA-03 and other alternatives in the next section of our comments.

**C. SA-Applicant presents significantly greater risks of potential environmental impacts and encroaches on higher quality natural resources than SA- 03 and several other system alternatives. Minn. Rule 7853.0130.B(3). The effects of SA-Applicant on the natural environment support a determination in favor of other alternatives. Minn. Rule 7853.0130.C(2) and C(3).**

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<sup>2</sup> See [http://water.epa.gov/polwaste/nps/watershed/upload/economic\\_benefits\\_factsheet3.pdf](http://water.epa.gov/polwaste/nps/watershed/upload/economic_benefits_factsheet3.pdf) (incorporated by reference) .

<sup>3</sup> See (<http://www.pca.state.mn.us/index.php/water/water-types-and-programs/surface-water/watershed-approach/index.html>)

Environmental risks are posed by all aspects of pipeline construction and operation, including post-spill recovery and restoration activities. The primary and most significant risks are associated with the long-term effects upon environmental and natural features that will be permanently altered, eliminated, or otherwise impacted by the presence of a pipeline, as well as the potential impacts of the release of crude oil as the result of a spill event during the potential 40 years or more that the pipeline will be operational. Those risks include environmental damages such as loss of wildlife, contamination of drinking water, destruction of fisheries, loss of habitat, and alteration of ecological systems. (For a discussion of the behavior and cleanup of oil spilled to surface water, soil, and groundwater, see Appendix A to the MPCA's comments.)

During these proceedings, the MPCA has commented extensively on the environmental concerns regarding the route proposed by Applicant in comparison to alternative routes and system alternatives. MPCA's prior comments can be found in Document Nos. 20146-100780-01, 20148-102458-02 and 20148-102458-04, each incorporated by reference. These prior comments have addressed such specific items as access to potential release sites in surface waters, potential to impact ground water, wild rice, the state's highest-quality surface water systems, wildlife habitat, low income populations, watersheds currently being assessed for restoration and protection strategies, fisheries, economies, and numerous other parameters.

In these comments, the MPCA concluded that with respect to protection of the highest-quality natural resources in the state, the SA-Applicant route presents significantly greater risks of potential impacts to environment and natural resources than several of the system alternatives, including SA-03. Although all proposed routes and system alternatives have the potential to impact some natural resources, the Applicant's proposed route encroaches on higher quality resources, superior wildlife habitat, more vulnerable ground water, and more resources unique to the state of Minnesota than do many of the proposed system alternatives. Several examples of the greater potential for harmful environmental impacts of SA-Applicant compared to other alternatives are highlighted in the following pages.

The relevance of other system alternatives depends upon whether the need for the project is determined based upon a narrower and more localized view or upon a larger regional view. While SA-03 has been identified as a reasonable and prudent project alternative as a general matter, it serves as such an alternative from both a localized and regional view. However, if need is determined based on a larger regional view of need, several other system alternatives may also be reasonable and prudent alternatives to meet that regional need. Consequently, the MPCA also addresses the comparative impacts of other System Alternatives and SA-Applicant to inform a determination of need from a regional perspective.

The broader objective of the proposed project is transporting oil to markets in the Midwest and along the eastern and gulf coasts, not to transport oil through the state of Minnesota



with termination in Superior Wisconsin.<sup>4</sup> Oil that is to be transported to Superior, Wisconsin through the proposed pipeline will continue through Wisconsin to Chicago (or Wisconsin and Michigan if routed to Sarnia, Ontario). Oil that would be transported via one of the southern system alternatives, such as SA-04, and on to the Chicago area would have to be transported through Iowa before reaching Illinois. In either case, Chicago appears to be a common destination for most if not all of the oil that is proposed to be moved through Minnesota.

Information regarding the existence of contractual agreements obtained when Applicant held an “open season” has been offered as the underlying basis for a determination of need.<sup>5</sup> The Applicant has suggested that the facility as proposed (SA-Applicant) is necessary in order to assure those contractual agreements are filled and that alternatives such as SA-03 would negatively affect the cost of fulfilling those agreements. This proceeding will determine whether the Applicant’s open season agreements establish the need for siting a pipeline through Northern Minnesota instead of along a southern alternate route. If the underlying actual and predominate need of the project is to get Bakken oil to Midwest regional markets in Wisconsin, Michigan, or Illinois, that need can be achieved by several of the system alternatives. The foregoing is generally and specifically supported by the direct and rebuttal testimony of Applicant’s witness Neil Earnest (Document ID Nos. 20148-102134-03, Earnest Direct Testimony, and 20151-105934-01, Earnest Rebuttal Testimony). See Figure 1, which is an overview of Applicant’s regional infrastructure and corresponding destinations.

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<sup>4</sup> Applicant testimony acknowledges that the project’s intended destination is not Superior, Wisconsin but refineries in the Midwest. Applicant witness Earnest, in rebuttal, indicates that oil from this project is not only competing with alternative modes of transportation to refineries in Chicago, Patoka, and Cushing. The oil is also competing with all of the other crude oil choices available to the refineries in the Midwest. Enbridge rebuttal at pp 5-6. “Accordingly, all else equal, higher Sandpiper transportation costs to the Midwestern markets acts to decrease the volume of Bakken crude oil that can be expected to be processed in the Midwest, and to lower the utilization of the pipeline.” (Earnest Rebuttal, 6) [20151-105934-01](#)

<sup>5</sup> Heinen Direct, pp. 6-7. The nature and content of these open season transportation service agreements are confidential. The MPCA has not examined the nature or substance of these agreements or their duration. Mr. Heinen also indicates in his testimony that he does not know the ultimate destination of that oil.

Figure 1



### **Comparative Evaluation of Environmental Effects**

The comparative long term environmental and eco-system impacts and the potential impact of spills must be carefully evaluated for each system alternative in determining the need for a pipeline project. Permanent harm to sensitive eco-systems, habitats, and species may occur following construction of a new pipeline. In addition, long-term impacts from a spill can be much more damaging in areas containing features such as environmentally sensitive areas and those with limited access. As discussed below, these long-term environmental and eco-system impacts should be accorded great weight in the determination of need for a pipeline project. Further, in associated routing proceedings, these impacts must be subjected to even more rigorous and detailed environmental review when evaluating alternative routes. It is not sufficient under Rule 7853.0130 to determine that the location for the proposed project is suitable or reasonable. Rather, the location should be one that best minimizes the risk to human populations and environmental and natural resources.

#### **1. Adverse Impacts to High Quality Surface waters are Greater under SA-Applicant.**

SA-Applicant traverses a greater number of high quality water bodies than does SA-03 and presents higher risk of environmental impacts from a spill or release of crude oil along its route corridor. Based on watershed health scores as determined by the Minnesota Department of Natural Resources in its Watershed Health Assessment Framework, MPCA documented that the adverse impacts to overall water quality from construction and operation, as well as spill cleanup and response, of Applicant's Alternative were more harmful than alternatives including SA-03, SA-04, and SA-05. See MPCA Comment letter dated August 21, 2014, Document ID Nos. 20148-102458-02 and 20148-102458-0420148-04, page 5).

The MPCA provides these additional comments to assist in proper interpretation of the information on surface waters in the Department of Commerce environmental analysis "Comparison of Environmental Effects of Reasonable Alternatives" (DOC study) submitted on December 19, 2014, (ID 201412-105567-01) and in evaluating the criteria and factors based on that information. For example, on its face, the DOC study may be misinterpreted as indicating that SA-03 is a worse alternative than SA-Applicant in affecting impaired waters. The DOC study concluded that there were 50 impaired waters crossed by the Sandpiper route, and 98 impaired waters crossed by SA-03 (DOC Study, 72, 90). Under the Clean Water Act ("CWA"), an impaired water is any water body (e.g., lakes, rivers, streams, wetlands) that is too polluted or otherwise degraded to meet the applicable water quality standards set by states, territories, or authorized tribes. Water quality and water quality standards will vary throughout the state depending on the region of the state in which the waters reside. "Impaired" waters are not the same across the state. For a water body to be deemed impaired in southern or western Minnesota (western corn belt plains or Red River valley ecoregions), it typically will have a greater degree of contamination or degradation than would be required for a water body in the central

hardwood forest ecoregion of Minnesota traversed by the applicant's preferred route (Sandpiper) to be deemed impaired. Thus, waters that are listed as impaired along the SA-Applicant route are likely to be higher quality (having a lower contamination level) than a water listed as impaired in the southern part of the state, and might not be listed as impaired at all along the SA-03 route. Waters in northern Minnesota are generally of better water quality or more pristine.

**2. Significant Environmental Damage Would Occur From a Release at or near a Water Crossing Extending up to at least a Distance of 10 Miles from the Point of Release. SA-Applicant Has Many Areas of Limited Access, Increasing the Risk of Extended Impact to Surface Waters.**

The most significant potential impact to a surface water from a crude oil pipeline crossing is the environmental destruction that would occur in the event of a release at or near the water crossing. According to a third party risk assessment document developed as part of the Keystone XL EIS<sup>6</sup>, Exponent states: "A distance of at least 10 miles downstream from the proposed centerline of the pipeline should be used for the identification of sensitive areas and for identifying CPSs (contributory pipeline segments) during the final design phase of the Project." The 10 mile estimate is fair, given the potential for flowing water to carry a release of oil, especially in remote areas such as those found throughout the proposed Sandpiper route. Considering that the 2010 Enbridge spill into Talmadge Creek and the Kalamazoo River caused significant damage approximately 35 miles from the spill site, a ten mile estimate of damages is conservative and reasonable. See Stolen testimony, Document ID 201411-104748-02, page 24.

Damage to aquatic systems from an oil release can occur either as a result of physical effects such as smothering of organisms, or toxic contamination due to the chemical compositions of the oil. An oil spill in an aquatic ecosystem could cause, among numerous other impacts, death of waterfowl, other bird species, amphibians, reptiles, aquatic mammals, microorganisms, plankton, fish, pets and livestock living adjacent to waters, stunted growth of surviving species, loss of vegetation, destruction of soils, long-term reduction of dissolved oxygen, human health damage, damage to air quality, property value loss, and destruction of drinking water resources. This does not include damages that would occur during the cleanup process, especially in areas with limited, restricted or no access.

**3. Potential Damages During Pipeline Construction and Testing Are Greater for SA-Applicant than other Alternatives.**

Damages to surface waters as a result of construction activities can and do occur. Flowing water can also carry these effects a long distance from their origin, as noted above. MPCA has observed and documented significant sediment discharges to surface water on pipeline

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<sup>6</sup> See <http://keystonepipeline-xl.state.gov/documents/organization/221278.pdf>, page XV, "Recommendations",

projects as a result of failing to install sufficient sediment and erosion controls on hillsides adjacent to surface waters. The failure to account for spring time subsidence of soils as a result of winter construction is common; frozen soils that are dug up and replaced into trenches thaw and subside in warmer spring temperatures, causing the soils to sink over the pipeline and form a ditch. These ditches act as conduits for melt water or rain water, and as they do not have sediment controls installed, tend to erode significantly as water runs through them. It is common for these subsidence ditches to terminate in water bodies, causing sedimentation and habitat damage (MPCA Comment Letter dated April 4, 2014, -Document ID 20144-98170-01, page 8).

Damage to surface water resources during hydrostatic testing discharges has occurred recently in the state. During these tests, segments of pipeline are filled with a significant volume of pressurized water, often millions of gallons, to test the integrity of the pipe. The water is then released in a manner that should minimize environmental impact. During the Alberta Clipper/Southern lights diluent project, Enbridge exceeded agreed-upon maximum discharge rates on 15 of its hydrostatic testing discharge operations. At two of these sites (adjacent to the Mississippi River and adjacent to the Clearwater River), the exceedances were enough to cause significant erosion and sediment discharge to surface waters. These cases were referred to the U.S. Environmental Protection Agency and eventually settled by the U.S. Department of Justice in 2013 with Enbridge paying a \$425,000 penalty. During these hydrostatic testing operations, as much as 4,000 gallons of water per minute can be discharged from valves. This water is general required to be discharged to an upland area or a dewatering device, but when discharged rates are exceeded, or sometimes even when they are not, the pressurized water can erode soils and carry those eroded soils to surface waters, causing turbidity or smothering of aquatic habitat.

The placement of the new terminal construction west of the proposed Clearbrook location as suggested by MPCA in SA-03 will assure that future pipelines are located west and south of these pristine areas, thus avoiding the resources that the state is spending millions of dollars to protect. Meanwhile, the continued expansion of the Clearbrook facility that will coincide with construction in the SA-Applicant location will mean continued impact and potential impact to the highest value (pristine) waters in our state as a result of future pipeline construction.

**4. Threats to Groundwater and Potential Drinking Water Supplies from SA-Applicant are Difficult to Assess, but Appear to Pose More Significant Risks than the System Alternatives, including SA-03.**

Highly detailed topographical data for the state of Minnesota (called "LIDAR" data ) illustrates that the Sandpiper route (SA-Applicant) traverses territory with greater topographical contrast than does the SA-03 route. Much of the topography along the SA-Applicant route in Minnesota is the result of the deposit of glacial till from thousands of years ago. The composition of this till is often dependent on how the till was deposited. A

term used to describe these soils is “moraine,” or a mass of rocks and sediment carried down and deposited by a glacier, typically as ridges at its edges or extremity.

What is most important to understand about the soils along the SA-Applicant route is that the complexity of moraines in the area creates a significant degree of localized changes in groundwater movement that are very difficult to predict, as opposed to some of the flatter lands to the west and south, such as those traversed by SA-03, SA-04, or SA-05. Typically, ground water through this till along the SA-Applicant route will move laterally and toward a water body, so it is important that significantly more data is gathered from this route before the possible movement of oil in the event of a release can be predicted and response plans developed. It would be very difficult, if not impossible, to accurately assess the potential for ground water contamination based solely on the examination of GIS layers. However, it can be predicted that the damage to groundwater, potentially used as a source of drinking water, as well as the connected soils could take decades to repair, if the damage could be repaired at all. Additional impacts could include damage to agricultural areas (inability to grow crops) and damage to surface waters, wildlife and habitat from oil carried through underground conduits to those areas.

The LIDAR data strongly suggests an increased potential for impacts to drinking water from SA-Applicant than from SA-03 and some other system alternatives. However, more in-depth study will need to be done in the routing phase in order to make an informed comparison and either confirm or negate what the LIDAR data suggests as a factual conclusion.

**5. SA-Applicant Threatens a Greater Percentage of Wild Rice and Native Forests than any of the Proposed Alternatives, including SA-03.**

Wild rice, in addition to being an important economic consideration in Minnesota, is also an extremely important cultural resource, as well as an essential food source for humans and wildlife. It requires very specific conditions and good water quality, both of which are provided by north central Minnesota lakes. The Sandpiper pipeline would encroach on some of the richest wild rice territory in the state of Minnesota. Further, MPCA staff has identified 10 wild rice locations along the Sandpiper route for which there is no access from pipeline to the location of the wild rice. By comparison, SA-03 has two such areas. As shown in Figure 2, SA-Applicant (in green) would threaten significantly more of the state wild rice crop than any system alternative.

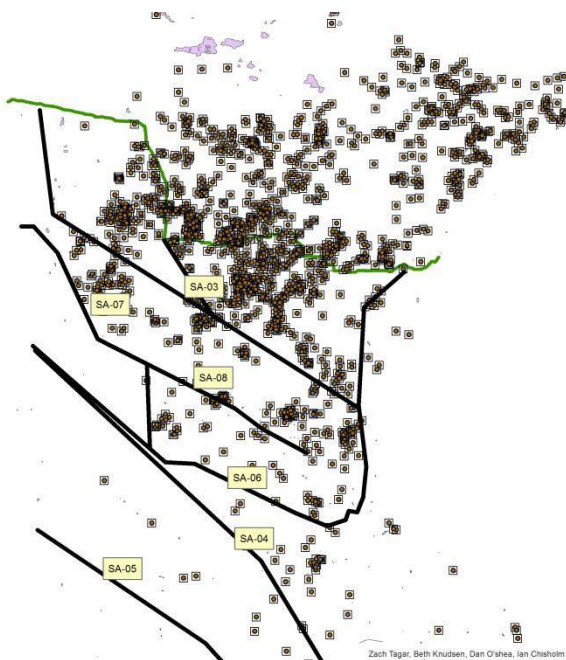


FIGURE 2 -- Wild Rice stands in Minnesota. The Sandpiper route (in green) would threaten more of the state's wild rice stands than any of the proposed system alternatives.

**6. SA-Applicant Has a Greater Potential for Impact on Ecoregions than other Alternatives, including SA-03.**

As accurately indicated in the DOC study, the majority of SA-03 crosses land that has been converted to agriculture or developed; this is true even when one considers only the portion of the system alternative within the state of Minnesota. Analysis of a GIS map of land cover in Minnesota (Figure 3 below) is helpful to indicate the land cover that would be crossed by SA-Applicant and the Alternatives. When the location of SA-Applicant, and other Alternatives are superimposed on Figure 3, it demonstrates that SA-03 skirts large areas of hay, grassland, pasture, and cultivated crop with infrequent passes through forested areas and wetland. By contrast, the SA-Applicant route crosses a significant amount of forested lands and wetlands, encroaching on significant agricultural land only west of Clearbrook and in the Park Rapids area. SA-Applicant can be seen to skirt far more forest and wetland areas than either system alternative SA-03, SA-04, or more southern alternatives.

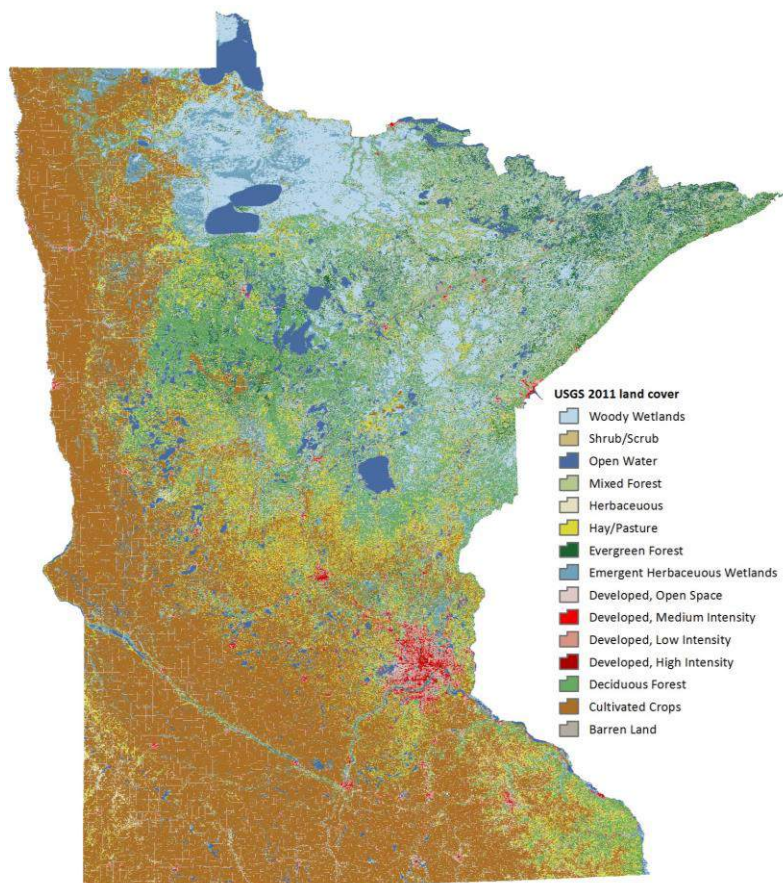


FIGURE 3-- The legend on the left indicates what land cover types are represented by what colors.

Forested areas, particularly larger, unfragmented expanses of forest, are necessary for a number of species of wildlife to survive. Many species of song birds, for example, need deep woods for nesting to avoid “edge species,” or species that are more tolerant of human disturbance, because certain edge species such as cowbirds can parasitize their nests and cause mortality to their young. Other species, such as certain reptiles and amphibians, are very habitat specific and cannot easily disperse if that habitat is damaged, such as when a

pipeline is placed through that habitat, altering vegetation, soils, and hydrology. Sensitive species of animals and plants require very specific, balanced conditions which can be permanently altered when a pipeline corridor is opened. Long term disturbance and fragmentation of these areas as a result of pipeline construction and siting will have negative impacts on these ecosystems and the wildlife dependent on these conditions.

In addition, an oil spill or release in these areas could result in toxic conditions in soils and vegetation which could kill wildlife. Vegetation would die off either as a result of direct exposure to oil, as a result of altering corridor topography or soil composition during construction activities or clean up after a spill. It is important to note that Enbridge has promised to separate topsoil only if asked to do so by landowners. It is equally important to separate and replace topsoil in forested, remote environments to maintain the integrity of those systems and mitigate some of the potential long-term impacts of pipeline construction.



Impacts to agriculture and pastureland can also occur, and have. However, farms typically do not provide habitat for large numbers of sensitive species or plants or animals that cannot exist elsewhere, and oil movement is likely to be reduced to some extent in flatter terrains with less water movement. Although financial impacts to the landowner and company responsible for the oil release may be greater than in some natural areas, actual environmental damage is apt to be less, and more easily mitigated.

**7. SA-Applicant Has More Locations with Poor Access in the Event of a Release than SA-03 or other Alternatives.**

As indicated in the June 24, 2014 letter by the MPCA (Document ID 20146-100780-01), access to potential leak sites in the State of Minnesota is of significantly greater concern along the SA-Applicant route than on any of the proposed system alternatives. MPCA staff identified 28 sites along the Sandpiper route for which access would be difficult or impossible within 250 feet of a 2000 foot downstream flow if oil were to be released in certain water bodies. By comparison, seven such areas were located on the SA-03 route, and none on SA-04.

A primary rule of thumb when planning for response to an oil leak is that a release in soil is better than a release in water, and a release in stagnant water is better than a release in flowing water. (For a more detailed discussion of the factors involved in oil spills and responses, see Appendix A to the MPCA comments.) In the Enbridge 2010 Kalamazoo River oil spill, oil caused environmental damage a reported 35 miles downstream from the original release site. The MPCA analysis was limited in scope and only took into account access within 2000 feet of a possible spill. The agency has not evaluated or assessed how much farther oil could travel in some of the identified locations along SA-Applicant's route before containment of a spill could be implemented if the leak were discovered in a timely manner. According to the aforementioned Exponent risk assessment for the Keystone XL pipeline, a small leak from a hole of 1/32 inch in diameter in a pipeline could remain undetected for several months, even with the most up-to-date leak detection technology in place. The same leak could release up to 28 barrels of oil per day, at 42 gallons per barrel. Thus, even a very small, virtually undetectable leak in a remote area, such as those located along much of the proposed Sandpiper route, could cause significant environmental damage such as that described under heading C.3 of this letter without being detected in remote areas, and limited access may also reduce the chance that a citizen may observe and report a leak too small for detection by technology.

The creation of access in remote locations where none exists can create its own problems, including damage to habitat, creation of a source of long-term erosion, fragmentation, aesthetic issues, alteration of hydrology, and other issues. The best way to avoid these concerns is to avoid or reduce the number of crossings of flowing water bodies, or those where access is limited.

From a perspective of minimizing risk of major environmental incidents due to inability to access potential leak sites in Minnesota, the proposed Sandpiper route fares more poorly than any of the proposed system alternatives.

**8. SA-03 and Other System Alternatives Follow Existing Corridors to a Greater Extent than does SA-Applicant.**

System Alternatives SA-03, SA-04, and SA-05 all follow specific, already existing pipeline corridors. Assuming that all have already passed at least some degree of environmental scrutiny and have been adjusted in critical areas to avoid key resources, a route in these corridors can also likely avoid critical areas and resources. It is important to consider that for these routes, there is no need to “estimate” possible impacts by using an inclusive buffer of a random width to determine quantities of resources that “might” be impacted if one imagines the width of the pipeline corridor to be several miles wide. Instead, one can make a fairly accurate determination of what the impacts or potential impacts of these routes would be based on a width of a few hundred feet. These proposed routes are not “crayon drawings” on a map, but represent actual in-the-ground infrastructure. Precise numbers of water body crossings, mineral extraction sites, forests, wetlands, population densities, cultural resources sites, access areas, and potential downstream carry of released oil all can be determined with relatively little effort by state agencies with access to the required location data. What cannot be determined without more detailed study because of limitations in ArcMap(GIS) capabilities is the quality of those resources. MPCA and Minnesota Department of Natural Resources (DNR) staff can provide general overviews of how the resources in those areas compare to the resources in the northern or forested parts of the state, but on the ground site-by-site analysis is required.

Some of the proposed system alternatives follow highway corridors to some extent, and thus specific placement of the lines is more difficult to guarantee and resource data would be difficult to assess at this stage without more specific information. However, a required consideration for pipeline routing as stated in MN. R. 7852.1900, subp. 3. F., is the use of existing rights-of-way and right-of-way sharing or paralleling. With that in mind, since SA-03, SA-04, and SA-05 all follow specific existing corridors, while SA-Applicant does not in its entirety, then all three system alternatives could be brought forward for further review if they are determined to meet the need for the project, provided that this criteria is considered worthy of sufficient weight in the process.

**Conclusion.**

SA-03 is a reasonable and prudent alternative to meet the need that may be demonstrated in this proceeding with fewer potential impacts to the highest quality surface waters and other natural resources in the state of Minnesota than SA-Applicant. Further, if the project need is to transport oil from the Bakken fields of North Dakota to markets in the Midwest, system alternatives SA-04 and SA-05 must also be considered as candidates to meet that

need, as they present fewer potential impacts to the natural environment of Minnesota and surrounding states than SA-Applicant.

If a determination of need is reached in this proceeding, the MPCA respectfully requests that the certificate of need be conditionally granted contingent upon suitable modification of SA-Applicant as necessary to protect and avoid high quality natural and environmental resource and the inclusion in the Route Proceeding, Docket No. CN-13-474, of SA-03 along with any other System Alternative that meets the identified need, pursuant to the Commission's authority under Minn. Rule 7853.0800.

Thank you for consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "William Sierks". The signature is written in a cursive style with a large, prominent initial "W".

William Sierks

Manager, Energy and Environment Section  
Minnesota Pollution Control Agency

## APPENDIX A

### BEHAVIOR AND CLEANUP OF OIL SPILLED TO SURFACE WATER, SOIL, AND GROUNDWATER

Presented below is general description of behavior and cleanup of oil spilled to surface water, soil, and groundwater.

#### **Behavior of Oil in Surface Water**

Many factors contribute to the spread and spill response efforts of an oil spill to surface waters, including weather, wave action and the chemical and physical properties of the oil. Oil that reaches surface water spreads on the surface of the water. If the water is flowing, the oil will be carried along. Additionally, wind will spread oil on water. By these forces thick layers of oil will spread and become thinner, more extensive layers. Oil spills may range from thickness measured in feet to a micron-thick rainbow of oil.

Some of the oil on water will evaporate. For example, Bakken oil is more volatile than many other crude oils. The evaporation of the “light end” portion of the oil increases the risk of ignition and exposure of responders to the toxic volatile components in the oil. Some of the oil on the water’s surface will sink, especially as it mixes with sediment and as it loses the light ends through evaporation. Alberta oil sands crude is more prone to sinking than are many other crude oils. Sunken oil may move with water and/or may sink into bottom sediment. It may later release from bottom sediment if disturbed or with changes in temperature or current. Oil that sinks is especially challenging and tactics for finding and recovering sunken deposits of oil are not well developed. Removal of oiled sediment creates significant damage on its own. Some of the oil on water will dissolve into the water. Benzene, a toxic component of all crude oil, is among the most soluble components of crude and refined oils. Oil in moving waters will form emulsifications, called oil mousse, which is difficult to recover. Crude oils and refined oils will also have varying levels of hydrogen sulfide and other gases and constituents that are potentially toxic to humans and water life. In addition, oil spilled in surface water will coat and kill emergent vegetation, wildlife, shoreline, structures, and vessels.

Most aspects of response to an oil spill to surface water are made more difficult and less effective in winter ice and snow conditions. This is especially so if oil gets under ice, or if

the ice is not safe for holding up responders and equipment. Sometimes oil on frozen ground or oil on top of competent ice makes for easier oil recovery.

Often a point is reached where the environmental damage caused by attempting to recover spread out and dispersed oil outweighs the damage of the oil. Consequently, oil spill response strategy is to contain spilled oil before it gets away.

### **Spill Response to Protect Surface Water**

Every oil spill recovery tactic requires speedy deployment of specialized equipment by specially trained responders. The tactics of recovery of oil from surface water include:

- Reaching the location of the spill, and reaching downstream oiled or potentially oiled locations. Access along a railroad track or pipeline right-of-way to the spill site sometimes is easy. But getting access to oil that has gotten away from the spill site down river or into fringing wetlands is often very difficult.
- Stopping the flow of oil from the land into the water. Each tactic requires access, and much equipment and specialized training.
- Capturing and containing oil downstream of the spill site. This is usually attempted with floating “containment booms” (floating 50 foot long plastic tubes chained together) to hold the oil. Placing containment booms require access and boats, booms and ropes, anchors, buoys, and specialized training. This equipment is seldom nearby. Containment booms are limited in the amount of oil they will hold back. Containment booms lose effectiveness in water with currents or shallow water. Containment also typically becomes less effective the further downstream oil travels and the more dispersed oil has become. Downstream capture and containment depends on the currents, weather, shoreline type, and access. The best-prepared companies have examined and prioritized potential down-stream containment sites in their response planning before the spill.
- Skimming, sorbing, or pumping oil from the water’s surface. A skimmer is a vacuum or sorbing device that pulls the floating oil layer off of the water. Sorbents are natural or man-made materials that absorb oil but not water. The oiled sorbent must then be recovered from the water for disposal. Vacuum trucks can pump oil from oil pools or thick layers of oil on water. Skimming, sorbing, and pumping oil requires access to the oil location and equipment and tanks to store recovered oil for eventual disposal.
- Down-stream, ahead-of-oil protection of shorelines and sensitive features. Containment boom can be deployed at some sensitive locations before the oil arrives to deflect oil further down-stream. Protection measures require careful selection of sites to be protected, since equipment and time does not allow

protection of all areas. In the best of cases, sensitive areas have been examined and prioritized in response planning before the spill.

- Mopping up oil that has been stranded on shorelines, wetlands, marinas, structures, etc. This can be done with sorbents, power washers, oil-lifting chemicals, excavation, etc. This is very labor-intensive work requiring equipment, access, and specialized training. Some mopping-up methods can damage or destroy environmental features, for example excavating beaches, steam cleaning rocky shores, or moving people and boats through wetlands.
- Sampling water, sediment, shoreline, vegetation, etc. to assess where oil or oil components remain in the environment and whether additional recovery is possible and warranted.
- Recovering residual oil from sediments, shorelines, wetlands, and other places as possible.
- Monitoring the ongoing effects of residual oil and of recovery operations.

Even a very aggressive and effective spill response will not recover all spilled oil from a surface water.

### **Behavior of Oil on the Ground, And In Groundwater**

As oil spilled onto the ground sinks into the ground, some oil will be retained by soil. So a small spill may be absorbed into soil and may never reach groundwater directly. But whether or not oil reaches groundwater, the oil retained on or in the soil will serve as a continuing source of groundwater contamination as infiltrating precipitation passes through it. Some soils such as clay have small or non-connected pore spaces such that oil will not readily pass through it, while soils like sands and gravels have large interconnected pore spaces through which oil will pass readily and quickly. The speed of travel is also dependent on the viscosity of the substance. Some oils are very “liquid,” passing through soil quickly; other oils are thick, and those thick oils move through soil pores slowly.

“Groundwater” happens at the depth below the surface when the pore spaces between soil particles are filled with water instead of air. The depth of groundwater is highly variable in Minnesota from a few feet to one hundred or more feet. Groundwater moves, typically slowly, towards connections with surface water, wells, or other discharge points. Some fractured rock formations will allow oil plumes to move very quickly and very far.

When oil meets groundwater, the oil will mostly float near the surface of the groundwater, smearing the soils in that interface. The floating oil is termed “free product.” It will spread out in a floating layer in the direction of groundwater flow. Some of this floating oil will

dissolve into groundwater forming a “plume.” Some will evaporate and rise towards the surface. Some will remain sorbed onto soil.

### **Spill Response to Protect Groundwater**

Once groundwater has become contaminated, the response strategies include understanding the direction, speed, and other characteristics of the groundwater. These response strategies use a variety of tools, including pre-existing information, soil borings, groundwater monitoring wells and geophysical methods. Classic physical strategies to protect groundwater from spills include:

- Pumping spilled oil from the ground’s surface before it sinks into the soil;
- Digging oil-saturated soils so that the oil won’t continue sinking into groundwater;
- Using high capacity blowers into the soil to suck the oil off the soil or groundwater as a vapor;
- Installing skimmers and pumps into the free product oil floating on the groundwater surface to pump out free product, and;
- Pumping groundwater to draw floating and dissolved oil to the surface for treatment.

Unfortunately, even a very aggressive and effective spill response will not recover all spilled oil from the ground. In those cases, if oil reaches groundwater, strategies for mitigating contaminated groundwater include:

- Ongoing groundwater pumping and treatment;
- Well replacement or treatment of a contaminated well;
- Adding restrictions on drilling new wells in the area;
- Adding oxygen and other materials to enhance natural degradation of oil;
- Ongoing monitoring to track contaminated groundwater behavior, and;
- Monitoring natural attenuation and biodegradation.

So, a spill of oil onto tight soils, with prompt recovery of oil from the ground’s surface, and prompt excavation of contaminated soils is more effectively cleaned up and less damaging than is a spill of oil onto permeable soils, or areas with shallow groundwater. Especially concerning are spills of large volumes of oil on permeable soils near wellheads.

### **Biodegradation of Oil**

It is well understood that oil that cannot be retrieved after a spill will eventually biodegrade over a period of years or decades. The rate at which biodegradation occurs in surface water, ground water, or soil is variable and contingent on many factors including oil concentration, soil types, temperatures, adequate oxygen and moisture. Oil-specific

chemical and physical properties influence biodegradation. Some refined oils have additives or other non-biodegradable components.

Dissolved oil at the front and side of the plume will typically be attacked by indigenous microbes. A steady-state will eventually be reached as the microbial biodegradation at the forward edge of the plume keeps up with the oncoming oil in the oncoming groundwater. As oil content of the plume is exhausted, this biodegradation consumes the most or all of the spilled oil and the plume shrinks. This process is called natural attenuation.

Understanding natural attenuation is important in a spill response, but natural attenuation is never accepted as the sole response to any spill. Plumes of oil contamination in groundwater are typically measured in hundreds of feet or fractions of a mile from the spill. A plume's life may be only some years, or may be very long.

### **Synopsis of A Few Oil Pipeline Spills in Minnesota**

The largest pipeline spill in Minnesota in recent decades was a 1.7 million gallon crude oil spill from Lakehead (now called Enbridge pipeline number 3 in Grand Rapids in March of 1991. Pumping and extensive excavations of wetland was done to recover most of the oil. About 300,000 gallons escaped to the Prairie River. Luckily, most of that oil flowed onto the river's ice surface, and was recovered by an aggressive and effective company response. If the spill had gone beneath the ice, or had it been in a different season, it would have been far more challenging to recover and would have caused much surface water and downstream damage.

In 2002, the Lakehead (now called Enbridge) pipeline number 3 leaked approximately 250,000 gallons of crude oil into wet land near Cohasset in 2002. An oil burn was done because of concern with impending rain pushing oil to the nearby Mississippi River. Remaining oil was pumped and excavated from the wet land and extensive land restoration done over several years.

In 2009 near Staples, Minnesota Pipe Line Company was reinforcing or replacing sections of pipe. A device placed on the line to temporarily reroute the line failed during the night, and approximately 210,000 gallons of crude oil was lost. It pooled at the surface and no surface water was nearby. An aggressive excavation was immediately begun. Many thousands of cubic yards of soil were removed and disposed off-site. A passive sump system was left in place for a few years at the deepest point of impact. The contamination did not migrate off site due to the significant excavation effort.





# Minnesota Pollution Control Agency

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May 12, 2015

Mr. Scott Ek  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of the Application of Enbridge Energy, Limited Partnership for a  
Certificate of Need and a Pipeline Routing Permit for the Line 3 Pipeline Replacement  
Project in Minnesota  
PUC Docket No. PL-9/CN-14-916 (Certificate of Need)  
PL-9/PPL-15-137 (Pipeline Routing Permit)

Dear Mr. Ek:

The Minnesota Pollution Control Agency (MPCA) offers these comments on the Certificate of Need (CON) application and the Pipeline Routing Permit application filed by the Enbridge Energy, Limited Partnership (Enbridge) in these dockets ("Line 3 Replacement" project).

The Minnesota Public Utilities Commission (PUC) has requested comments on three topics concerning the completeness of the Enbridge Line 3 Replacement applications:

1. Does the CON application contain the information required under Minn. R. 7853.0220 to 7853.0260 and Minn. R. 7853.0500 to 7853.0640?
2. Does the pipeline route permit application contain the information required under Minn. R. 7852.2100 to 7852.3100?
3. Are there any contested issues of fact with respect to the representations made in the applications?

The MPCA understands that Enbridge's preferred route is proposed to co-locate the Line 3 Replacement on the same route as its proposed Sandpiper pipeline project. Although the MPCA's environmental concerns with the Sandpiper project are known, it must be noted here that the discussion of alternatives in the Line 3 Replacement applications does not address those concerns or consider any system or route alternatives that were brought forward in the Sandpiper proceedings. Nor do the applications appear to provide adequate basis for selection of a southern route alternative over a northern route alternative, such as rebuilding of the Line 3 Replacement in its current location.

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The MPCA contests both the adequacy of the environmental analysis and the lack of consideration of reasonable alternatives in the applications.<sup>1</sup>

**Failure to address alternatives and evaluate environmental impacts.** Enbridge intends to locate the Line 3 Replacement pipeline adjacent to the Sandpiper pipeline between Clearbrook and Superior. The MPCA has filed comments raising environmental concerns with this route in the Sandpiper dockets (see Dockets 13-473 and 13-474). Since the Line 3 Replacement project follows the same proposed route, it raises substantially the same concerns that the MPCA expressed in Sandpiper, but the applications do not address those concerns.

It does not appear that Enbridge evaluated any system alternatives or route alternatives that have been included in the Sandpiper docket. Sandpiper System Alternative 3 and System Alternative 3 Modified (a route alternative included by the Commission in the Sandpiper route proceeding) are given minimal to no consideration.<sup>2</sup> Despite Enbridge's awareness of the significant environmental concerns expressed by state agencies and interested parties in the Sandpiper proceedings, and the alternatives offered in those dockets, the Line 3 Replacement applications do not address these alternatives.

The applications discuss three options, the preferred route and two alternatives involving replacement along or parallel to the existing Line 3, i.e., rebuilding Line 3 in place. However, the applications do not adequately discuss the alternatives for rebuilding Line 3 in place or the resulting impacts to environmental values of all three options. The applications also do not provide sufficient information for comparison and informed consideration of the options.

**Need for comprehensive environmental analysis of cumulative environmental effects.** The proposal to place Line 3 next to Sandpiper increases the potential to impact some of Minnesota's most pristine natural resources. The Commission has authority and responsibility under the Minnesota Environmental Policy Act, Minn. Stat. ch. 116D, to make a detailed evaluation of the potentially significant environmental effects, including cumulative potential effects, alternatives, and measures that would avoid or mitigate the potential environmental harm from this project. The possibility of simultaneous construction is not addressed, nor is the effect of continuous construction of two pipelines over extended construction seasons.

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<sup>1</sup> The MPCA comments are generally directed to: the adequacy of Enbridge's CON application under Minn. R. 7853.0250.A (relating to the socially beneficial uses of the output of the project, including "its uses to protect or enhance environmental quality"); Rule 7853.0540 Alternatives; Rule 7853.0600 Information Required (environmental data); Rule 7853.0630, subp. 3 and 4 (safeguards); Rule 7852.2600, (route alternatives and description of environment); Rule 7852.2700 (environmental impact of preferred route); Rule 7852.3100 (consideration of alternative routes); and the sufficiency of the application for purposes of a detailed evaluation of the potentially significant environmental effects under the Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D.

<sup>2</sup> The MPCA and MDNR have provided extensive environmental information on SA-3M as an alternative to the Applicant's route. (See MPCA's Oct. 29, 2014 comment identifying a specific route for SA-3M, and MDNR's Jan. 23, 2014 comment letter).

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Section 7.1.3 of the route application (Impact Calculations) states that calculations are based on an assumption that the Sandpiper pipeline will be constructed first. Timing of the construction of both projects is important. Construction of both lines could begin in 2016, yet the possibility and consequences of simultaneous construction are not addressed. Construction of the two projects in the same corridor may well result in greater impacts to surrounding terrain and water bodies than would occur if one project were built after another, because staging, spoils placement, and work space could not fully use the corridor. The discussion of project impacts should address the potential of concurrent construction impacts and the effects of extended construction of two projects in the same corridor on human, natural and environmental resources. The absence of that analysis in this section contributes to an inadequate analysis of likely site conditions and of the anticipated construction activity sequence.

**Response on spill analysis.** The applications do not have a sufficiently detailed analysis of the effects of a potentially catastrophic failure. In the introduction to section 7.0 of the route application, addressing the environmental impact of the preferred route, Enbridge makes the following statement:

The Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Natural Resources (MNDNR) have expressed concern with regard to the potential impacts of a catastrophic oil spill from the Project on environmental resources. An overall incident frequency was developed for the Keystone XL Project<sup>3</sup>, which is also designed of x70 steel pipe. Based on these statistics, it is highly unlikely that a spill or leak will occur along any given small section of the pipeline. Therefore potential impacts from a theoretical oil release are not identified in Section 7.0 due to the extremely low frequency and many assumptions that would first be necessary to adequately quantify how a leak would affect the environment. Enbridge will continue to work with the applicable agencies regarding leak prevention measures and emergency response.

While the MPCA agrees that it may be unlikely for a spill to occur at "any given small section of the pipeline," the applications do not adequately discuss potential environmental impacts such as what would occur to surface water, drinking water, human health, terrestrial wildlife, aquatic wildlife, vegetation, soils, and other resources in the event of a spill, as required by Rule 7852.2700. It is reasonable to anticipate that a leak or spill will occur at some point during the operational life of the pipeline. The applications should address the potential impacts that a significant spill would have on the various types of terrain and aquatic resources along the project route.

To summarize, the MPCA believes that information minimally necessary for any meaningful assessment and comparison of potential environmental impacts under the criteria of PUC rules and MEPA are missing from Enbridge's current applications.

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<sup>3</sup> The MPCA notes that the Executive Summary of the Final Supplemental Environmental Impact Statement for the Keystone XL project (Page 30), states that the risk of spills and leaks represents the "greatest potential threat to water and aquatic resources."

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Thank you for consideration of these comments.

Sincerely,



William Sierks, Manager  
Environment & Energy Section  
Resource Management & Assistance Division

WS:bt



## Minnesota Pollution Control Agency

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June 24, 2014

Mr. Larry B. Hartman  
 Environmental Manager  
 Minnesota Department of Commerce  
 85 7<sup>th</sup> Place East, Suite 500  
 St. Paul, MN 55101-2198

RE: Enbridge Sandpiper Pipeline Project - North Dakota Pipeline Company LLC  
 Pipeline Routing Permit Application, MPUC Docket No. PL-6668/PPL-13-474  
 Replacement May 30, 2014 Letter with Maps

Dear Mr. Hartman:

On April 14, 2014, the Minnesota Public Utilities Commission (PUC) extended the comment period in the matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project (Sandpiper) in Minnesota. This letter appends the Minnesota Pollution Control Agency (MPCA) letter on this subject, which was submitted to you on April 4, 2014.

We understand the topics open for comment include alternate routes, human and environmental impacts to be studied in the Comparative Environmental Analysis (CEA), and whether any specific methods or mitigation exist to address these impacts that should be studied in the CEA. MPCA's additional comments on these topics include:

- Inspection and monitoring
- Additional items for evaluation in the CEA
- Watershed Restoration and Protection Strategy
- Carbon footprint
- Environmental justice
- Alternate route analysis
- Cumulative impacts

### **Inspection and Monitoring**

On April 16, 2014, Enbridge, doing business as North Dakota Pipeline Company LLC, submitted a proposal to the MPCA regarding independent/third-party environmental monitors for the proposed Sandpiper project. MPCA does not agree that Enbridge should be hiring and directing these inspectors/monitors, but rather that they report directly to a state agency with jurisdiction over the project. The MPCA requests that the PUC require that another agency directly hire independent inspection and monitoring contractors and/or temporary staff to conduct this work under MPCA oversight to be funded by Enbridge.

The structure, work plan, and cost of a monitoring and inspection plan should be determined while the CEA is being prepared. The MPCA and Minnesota Department of Natural Resources (MDNR) staff, who have been working collaboratively on the Sandpiper project, are willing to participate with Enbridge and

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participating agencies to develop the appropriate information and mechanism. The mechanisms for this would be worked out among the parties. The payment of the state's reasonable costs should be a provision of the PUC's route permit issued to Enbridge.

### **Additional Items for Evaluation in the CEA**

The MPCA requests that Enbridge complete a Phase I Environmental Assessment (Phase I) of the selected pipeline construction corridor in accordance with the All Appropriate Inquiry (AAI) standard as per the National Environmental Policy Act (NEPA), Title 40, Code of Federal Regulations Part 312. The Phase I is conducted to research and review potential locations of existing/historic dumps, hazardous waste sites, and other environmental concerns. If areas of environmental concern are identified in association with construction of the pipeline, Enbridge should be required to prepare work plans to describe how solid/hazardous waste/contaminated soil and groundwater will be investigated prior to construction, and how impacted areas will be dealt with in accordance with state and local regulations.

MPCA requests that the CEA include a detailed risk assessment regarding the potential for leaks to occur, how much oil might be released, and how this could affect groundwater, surface water, aquatic life, and others. The hydrogeology of the pipeline corridor area should be studied to determine potential fate and transport of a release, and potential vapor intrusion issues if a release occurs in close proximity to human habitation.

### **Watershed Restoration and Protection Strategy**

In 2006, the Minnesota Legislature passed the Clean Water Legacy Act, which required the MPCA to develop an approach to comprehensively monitor and assess the waters of the state every 10 years, and provided one-time funding for that effort. In order to provide long term, consistent funding for Minnesota's clean water efforts, on November 4, 2008, Minnesota's voters passed the Clean Water Land and Legacy Amendment (Legacy Amendment) to the Minnesota Constitution to, in part, protect and restore lakes, rivers, streams, and groundwater. The Amendment imposed three-eighths of one percent sales tax to fund the effort for 25 years. Subsequently, in 2013, the Clean Water Accountability Act was passed by the Minnesota Legislature. This new law requires the MPCA to develop watershed restoration and protection strategies (WRAPS) for each of the state's 81 major watershed units, which correspond to the 8-digit hydrologic unit codes (HUCs). WRAPS include the monitoring and assessment information, as well as land use-based models that demonstrate the source of the highest contributors of pollutants in each watershed. This information is then used to develop strategies to either protect waters that meet water quality standards or restore waters that do not meet standards.

The WRAPS is a collaborative effort that involves the MPCA, the MDNR, the Board of Water and Soil Resources, the Department of Health, the Department of Agriculture, local soil and water conservation districts, watershed districts, the University of Minnesota, industry and business organizations, and the private citizens of Minnesota. WRAPS components are: monitoring and assessment of hydrology and the chemical and biological constituents of water quality, a stressor identification process, total maximum daily loads (TMDLs) and restoration plans for impaired waters, protection strategies for waters that currently meet standards, and a civic engagement process to assist stakeholders with implementing protection and restoration strategies.

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While not yet completed, WRAPS are in process in the following major watersheds that the Sandpiper proposal will cross, also identified by the corresponding eight-digit HUCs:

- Grand Marais Creek HUC 09020306
- Red Lake River HUC 09020303
- Clearwater River HUC 09020305
- Mississippi – Headwaters HUC 07010101
- Crow Wing River HUC 07010106
- Pine River HUC 07010105
- Mississippi – Grand Rapids HUC 07010103
- Kettle River HUC 07030003
- St. Louis River HUC 04010201
- Nemadji River HUC 04010301

One of the first tenets of any protection strategy is to avoid impacts where possible. The Sandpiper proposal is not consistent with the protection strategies that are currently in development for these WRAPS, due to the large number of high quality surface waters that lie along the path of the proposed route. Enbridge should participate in stakeholder groups for these WRAPS. Stakeholder groups provide a forum for engaged citizens and interested groups to develop implementation strategies to restore and protect each watershed. The CEA should review and consider how to integrate the strategies into the proposal, or find alternate routes that have less potential for impacting surface and groundwater.

### **Carbon Footprint – Greenhouse Gas Emissions**

The MPCA is concerned about the carbon footprint of a project. The Minnesota Legislature established greenhouse gas (GHG) reduction goals in the Next Generation Energy Act (Minn. Stat. 216H.02). The goals of the Next Generation Energy Act are to reduce greenhouse gas emissions by 15 percent below 2005 levels by 2015, and 80 percent by 2050. Greenhouse gases, upon release to the atmosphere, warm the atmosphere and surface of the planet, and lead to alterations in the earth's climate. The GHG emissions measured and reported in Minnesota include carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), sulfur hexafluoride (SF<sub>6</sub>), and two classes of compounds known collectively as hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs). These GHG emissions result from fuel combustion, the calcination of limestone, the degradation of organic (peats) and mineral soils, permanent land clearing and forest harvesting, and a variety of other sources. Pertaining to this project, source types include stationary and mobile source combustion from construction equipment, emissions from venting, and wetland and forest disruptions.

To track progress with the Next Generation Energy Act reduction goals, the CEA should evaluate the GHG emissions from the project and the impact these emissions may have on the attainment of the state's GHG reduction goals. Alternatives and options to reduce GHG emissions or to offset/mitigate GHG emissions should also be identified in the CEA. In addition, the CEA should evaluate the GHG impacts if this project is not built – specifically, if oil is transported by rail or truck instead of by pipeline.

### **Environmental Justice**

The MPCA works to incorporate environmental justice principles into its projects. Environmental Justice (EJ) involves assuring the fair treatment and meaningful involvement of all persons, regardless of race or income when making environmental decisions. Fair treatment means that no group of people should

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bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies. Meaningful involvement means: people have an opportunity to participate in decisions about activities that may affect their health and the environment in which they live; the public's contribution can influence the regulatory agency's decision; their concerns will be considered in the decision making process; and, decision makers seek out and facilitate the involvement of those potentially affected.

The proposed route of the Sandpiper Pipeline and other alternate routes may directly affect low income and minority populations. If a pipeline leak or break occurs, adverse impacts could occur in both surface and subsurface drinking water supplies, areas with stands of wild rice important to local Tribes and tribal members, cropland areas, impaired waters, and wildlife management areas among other types of environmental, social and economic impacts. If the Northern route or other alternate routes are chosen, the Sandpiper Pipeline may affect tribal lands.

The CEA should include consideration of EJ issues. The CEA should look at how pipeline construction and operation, and potential problems during each of these phases, may cause disproportionate impacts on low-income or minority populations. In addition, local, state, and federal agencies should engage residents to assure that they are aware of opportunities to participate in the process and understand how their comments and concerns are incorporated into the final draft CEA.

### **Alternate Route Analysis**

The MPCA staff's analysis of the proposed Sandpiper route shows many water body crossings for which there would be very difficult or no access downstream of the crossing to clean up spills in the event of a crude oil release. The lack of possible access to these areas by people and equipment necessary to clean up spills increases the likelihood that an incident could result in significant long-term environmental damage. A failure to account for these possibilities is considered to be a substantial flaw with the currently proposed Sandpiper route.

There are many variables that could be examined when considering the potential for environmental damage in the event of a release. These include: soil types, wetland types, sensitive or endangered species, proximity to aquifers, hydrology, forest types, state park boundaries, proximity to human populations, proximity to areas with stands of wild rice, connectivity of surface waters, and others. However, for purposes of providing a simpler and effective comparison between alternative route proposals that is both visual and quantifiable (within certain limitations that will be discussed in this letter), MPCA staff has elected to compare the routes based on access to potential leak sites for purposes of containment of spills and possible clean up.

To minimize variables and subjectivity for this analysis, MPCA staff opted to identify, using ArcGIS technology, water body crossings that had neither road or traversable upland features within 250 feet of flowages of water (heavily forested areas are not considered for this purpose to be traversable, as trees would have to be removed before equipment could be brought in), or portions of larger wetland complexes that fell within a 2,000 foot buffer of the point where the proposed pipeline route was to cross a stream, lake, or wetland. The 250-foot distance from access point to flowage is somewhat arbitrary. MPCA staff conferred with contractors and engineers who specialize in road construction, and most felt that in a best-case scenario, with aggregate and equipment available, a 250-foot road into a bog or wetland would be constructed within 24 hours. Thus, for purposes of this analysis, MPCA staff



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assumed that it is possible to build an access road to reach areas where containment of a spill might be accomplished before the spilled product covers an area large enough that cleanup would be highly destructive to a sensitive environment, or impossible. Similarly, there is no regulatory basis for choosing the 2,000 foot buffer distance, other than it is a significant distance for oil impacts to occur over any surface water and easy to apply consistently statewide. It is a distance that for most people would be easy to visualize, yet small enough to create a fair comparison between routes. These numbers provide a basis for comparisons between routes and have little significance beyond that. However, if these criteria are used consistently for all proposed routes, it does provide a basis to compare the potential for each route to cause considerable environmental damage in the event of a release.

There are some factors to consider that fall beyond the scope of this comparison. For example, the water crossings proposed for the Sandpiper route are frequently streams or flowages with connectivity to other water bodies downstream. By contrast, water body crossings on the Northern route frequently involve very large wetland complexes rather than smaller, faster moving flowages. The area needed to access might be much greater, but the oil may move more slowly in such areas. Counting becomes a bit more difficult here as well, because it is difficult to establish criteria for counting "crossings" that is comparable to the different features observed in the Sandpiper route. In most cases, MDNR catchment flow lines were used to distinguish one crossing point from another.

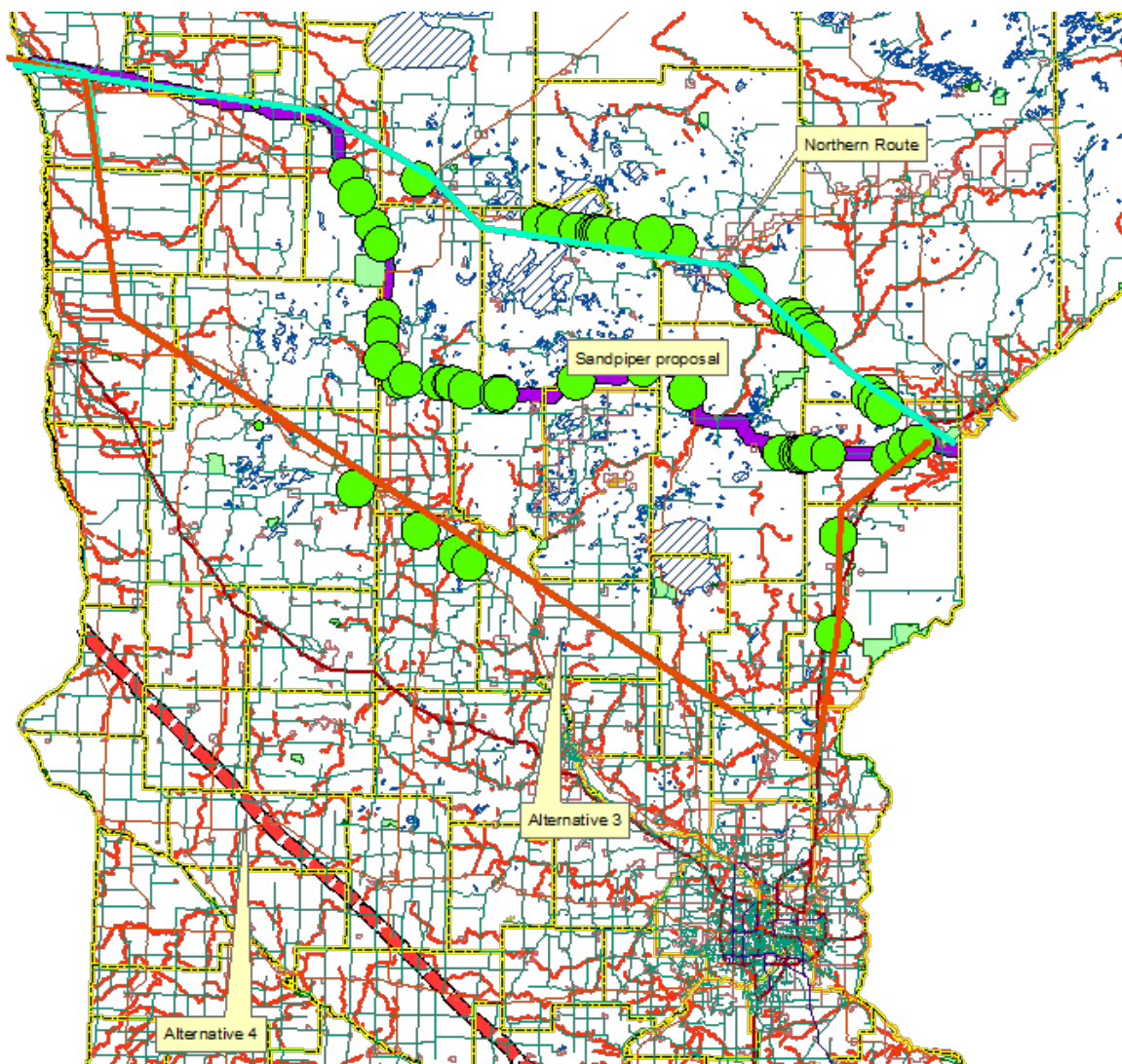
In any case, the method used as a basis for comparison by MPCA staff does provide quantifiable data to analyze the proposed routes from a meaningful perspective: Which route proposals pose the greatest risk to create destructive and expensive containment and cleanup operations in the event of a spill?

MPCA staff compared four proposed routes in their entirety (see Figure A below). The four proposed routes that were compared were (1) The currently proposed Sandpiper route; (2) The "Northern" route, used by Enbridge for previous projects and which has been suggested as an alternative by other entities; (3) The "Alternative 3" route which was identified as a possible alternative by MPCA staff; and (4) The southern "Alternative 4" route which exits the state at the Iowa border and would be required to tie into the Enbridge infrastructure either in another state, or to circle around outside of Minnesota to end at the Superior Terminal. The fourth route was suggested as an alternative by a citizen group.

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**Figure A-The green circles mark points where MPCA staff have identified access concerns. Approximate locations of the four primarily examined proposals are also identified.**

Any water body crossing, especially streams, rivers, or flowages of any kind that can carry oil downstream, pose the risk of creating large scale environmental damage in the event of a release. If possible, it is best to avoid crossing surface waters altogether with oil pipelines in order to minimize this risk. However, if a water body, bog or otherwise sensitive area is to be crossed, then serious consideration should be given to whether the site can be accessed quickly in the event of a release to contain the product, minimize migration of product into surface waters, soils and groundwater, and perform clean-up operations. In situations where roads have to be constructed to access a spill, the act of constructing the road, excavating and clearing vegetation can all exacerbate the damage that the spill itself created. Additionally, placement of flow control valves in strategic locations along/near sensitive areas may help to minimize backflow of product out of a fractured line into those areas.

A difficulty with aerial photograph analysis as opposed to field surveying of water crossings is that it is difficult to determine whether a stream or wetland is permanently, seasonally, or intermittently flooded. MPCA staff relied on National Wetland Inventory maps to identify wetland types, which will to

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some extent help to determine the likelihood of the wetland having open water at the time of a leak, which would allow transport of released oil to occur more quickly, or merely be in a state of saturated soil, which would result in easier and faster containment and cleanup of a spill. The results of the MPCA staff analysis are as follows:

### Sandpiper Route

The proposed Sandpiper route crosses 28 water bodies for which there is no access for possible containment within 2,000 linear feet downstream of the proposed pipe crossing. Of these 28 water body crossings, one is a stream to lake system, 12 are wetland complexes, 10 are streams that flow to wetland systems, and five are streams that flow to areas with stands of wild rice. Below is a list of the water body crossings for this route option, followed by example Figures B and C:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Sandpiper Route	Mahtowa	T47 R18W S8	Moose Horn River
Sandpiper Route	Salo	T47 R22W S1	Headwaters Sandy River
Sandpiper Route	Salo	T47 R22W S2	Headwaters Sandy River
Sandpiper Route	Automba	T47 R21W S6	West Branch River
Sandpiper Route	Salo	T47 R22W S6	Headwaters Sandy River
Sandpiper Route	Automba	T47 R21W S6	West Branch River
Sandpiper Route	Automba	T47 R21W S1	Heikkila Creek-Kettle River
Sandpiper Route	Atkinson	T48 R18W S36	Blackhoof River
Sandpiper Route	Copley	T147 R37W S34	Walker Brook
Sandpiper Route	Moose Creek	T146 R36W S29	Upper Rice Lake-Wild Rice River
Sandpiper Route	Bull Moose	T138 R31W S12	Headwaters South Fork Pine River
Sandpiper Route	Bull Moose	T138 R31W S11	Headwaters South Fork Pine River
Sandpiper Route	Bull Moose	T138 R31W S11	Headwaters South Fork Pine River
Sandpiper Route	Arago	T141 R35W S17	Hay Creek
Sandpiper Route	Northwest Aitkin	T50 R26W S22	White Elk Creek
Sandpiper Route	McKinley	T138 R32W S3	Goose Lake-Big Swamp Creek
Sandpiper Route	McKinley	T138 R32W S4	Goose Lake-Big Swamp Creek
Sandpiper Route	Crow Wing Lake	T139 R33W S36	Burgen Lake
Sandpiper Route	Crow Wing Lake	T139 R33W S36	Burgen Lake
Sandpiper Route	Crow Wing Lake	T139 R33W S33	Town of Huntersville-Crow Wing River
Sandpiper Route	Straight River	T139 R35W S36	Blueberry Lake-Shell River
Sandpiper Route	Blind Lake	T139 R28W S26	Arrowhead Lake
Sandpiper Route	Hubbard	T139 R34W S31	Shell River
Sandpiper Route	Beulah	T139 R25W S9	Moose River
Sandpiper Route	Straight River	T139 R35W S6	Straight River
Sandpiper Route	Bear Creek	T145 R36W S35	Gill Lake-Mississippi River
Sandpiper Route	Todd	T140 R35W S6	Fishhook Lake
Sandpiper Route	Lake Hattie	T144 R35W S19	LaSalle Lake-Mississippi River

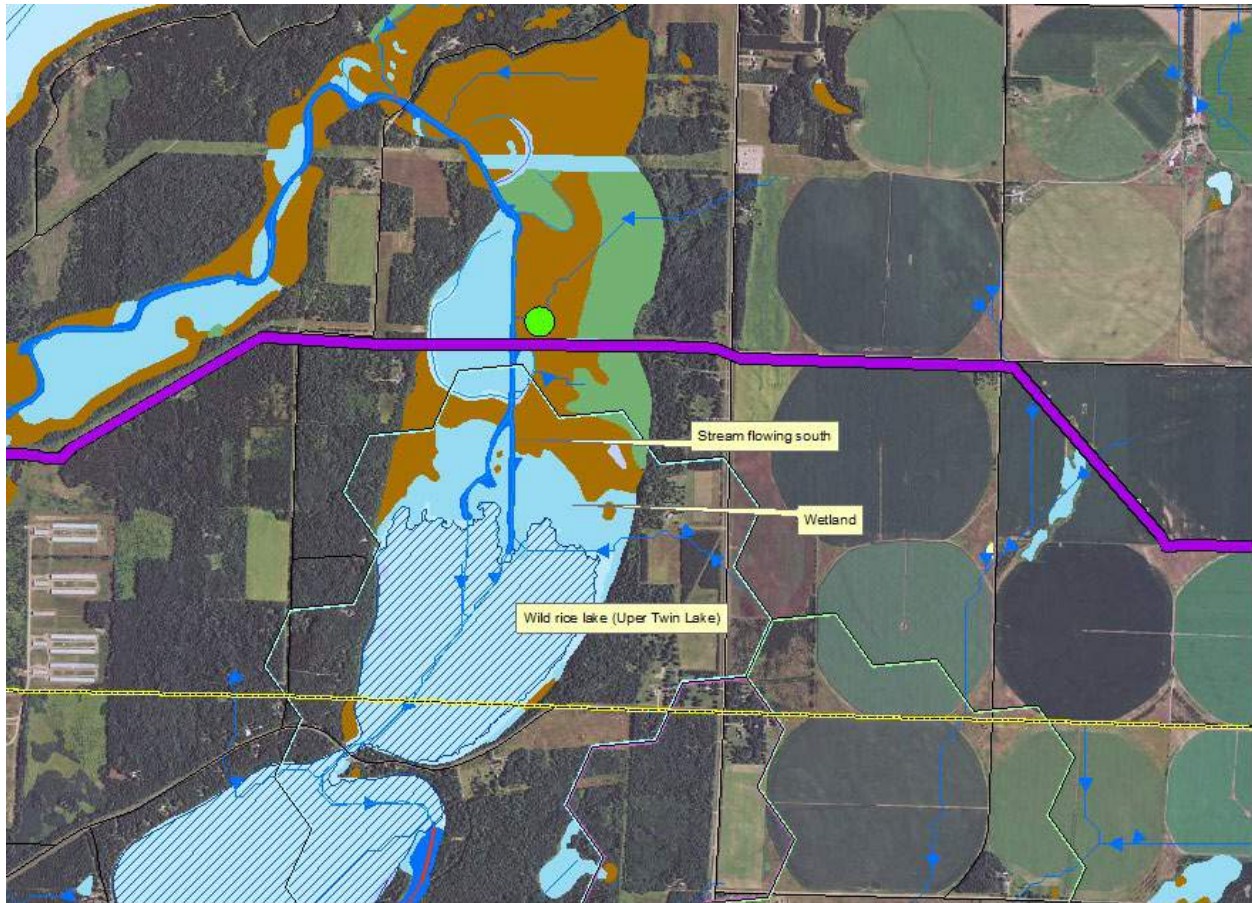


Figure B - This shows an example of a proposed crossing point over surface water that flows south (see arrows on dark blue flowage line) through a wetland complex and into a wild rice lake (the Twin Lakes near Menahga and Park Rapids, MN). However, to determine accessibility, the wetland identification layer must be turned off so that land features can be examined as in Figure C below. The purple line is the proposed Sandpiper route. (Scale 1:24,001)

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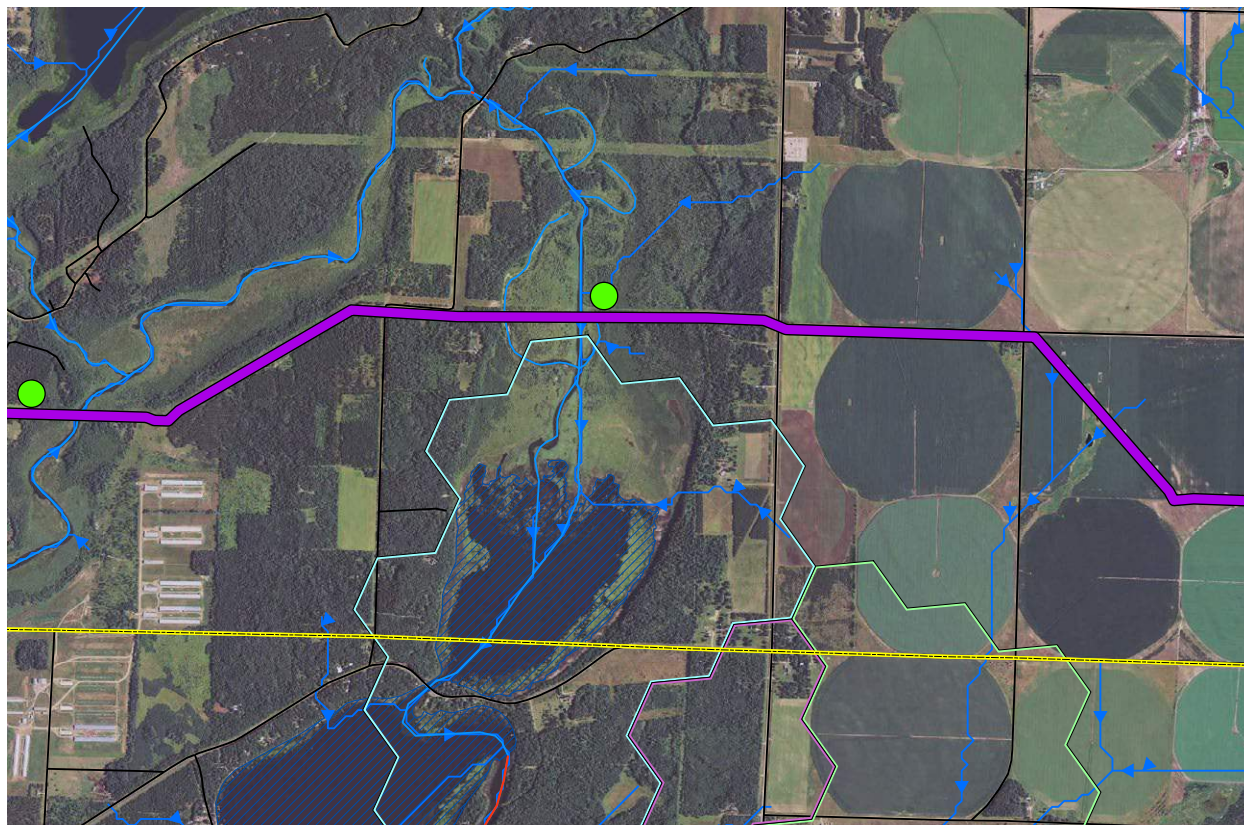


Figure C-Here, the wetland layer is turned off so that the landscape can be examined for accessibility. In this instance, there are no roads or open farmland to bring containment or clean-up equipment within 1,500 feet of the flowage that would potentially deliver leaked crude oil into the upper most of the Twin Lakes. The curvy black line between the lakes is a road, and the first good point of access. This road is 6,700 feet from the pipeline crossing, although it is possible that boats or barges could access the lake from the farm fields to the right (east) or the road (black line) to the left and contain a spill within the lake. (Scale 1:24,001)

#### Hill Route

The "Hill route alternative," suggested by the MDNR as a way to avoid features of concern, would not differ from the proposed Sandpiper route based on the criteria discussed here.

#### Northern Route

The Northern route, which parallels the path of the Alberta Clipper project, crosses 20 water bodies for which there is no access within 2,000 feet downstream of the location where crossings would occur if the route were followed. Along the Northern route, water bodies without access to potential leak sites within 2,000 feet include one stream that flows to a lake, 14 wetland complexes, five stream/wetland systems, and two streams or wetlands that flow to areas with stands of wild rice or wetlands. Below is a list of the water body crossings for this route option, followed by example Figures D and E:

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NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Northern Route	Pot Shot Lake	T52 R21W S8	Floodwood River
Northern Route	Northeast Aitkin	T52 R22W S1	West Branch Floodwood River
Northern Route	Wawina	T53 R22W S27	West Branch Floodwood River
Northern Route	Deer Lake	T56 R26W S29	Mississippi River
Northern Route	Bowstring Lake	T144 R26W S3	Little Winnibigoshish Lake-Miss. River
Northern Route	Morse	T145 R25W S35	White Oak Lake-Mississippi River
Northern Route	North Cass	T145 R27W S35	Sixmile Brook
Northern Route	North Cass	T145 R27W S34	Sixmile Brook
Northern Route	North Cass	T145 R27W S34	Sixmile Brook
Northern Route	North Cass	T145 R27W S33	Sixmile Brook
Northern Route	North Cass	T145 R28W S26	Sixmile Brook
Northern Route	Wawina	T53 R22W S28	West Branch Floodwood River
Northern Route	Blackberry	T54 R24W S13	Blueberry Lake-Mississippi River
Northern Route	North Cass	T145 R29W S24	Portage Creek
Northern Route	North Cass	T145 R29W S20	Portage Creek
Northern Route	Wilton	T147 R34W S34	Grant Creek
Northern Route	Pot Shot Lake	T52 R21W S22	Floodwood River
Northern Route	Perch Lake	T49 R18W S7	Perch Lake
Northern Route	North Carlton	T49 R19W S1	Stoney Brook
Northern Route	Arrowhead	T50 R19W S27	Bog Lake

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Figure D-With NWI wetland layer turned on, one can see wetland extending well beyond the 2,000 foot buffer at this crossing along the "Northern" route. The purple is bog, the green is forested wetland. In Figure E below the wetland layer is turned off so that accessibility to a potential leak here can be determined. (Scale 1:24,001)

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Figure E- With the wetland identifying layers turned off, one can see that there are no roads or upland areas from which to access potential leak sites at this crossing. There is a possible access point identified to the southwest of the pipeline crossing, but containment equipment would have to be strung across over 3,000 feet of wetland as it flows into the lake to contain all of a release as it flows to the south. (Scale 1:24,001)

### Alternative 3 Route

The Alternative 3 route corridor, which was referenced earlier in the letter, begins at the same western point that both the Sandpiper and Northern routes do; however, roughly 20 miles west of the North Dakota border it veers south and follows an existing (possibly abandoned) pipeline south and then southwest to roughly five miles west of North Branch, Minnesota, where it then follows another corridor in a northerly direction, where it eventually intersects with the proposed Sandpiper route just west of Superior, Wisconsin. This route has 7 water body crossings with no access within 2,000 feet downstream of the pipe crossing; however, these water bodies are often smaller wetland complexes than are seen on either the Sandpiper route or the Northern route. These crossings without access within 2,000 feet



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include two wetland complexes, four stream/wetland systems, and one area with stands of wild rice. Below is a list of the water body crossings for this route option, followed by example Figures F and G:

NAME of ROUTE	TOWNSHIP NAME	LOCATION (TWP/RNG/SEC)	LOCATION of AREA
Alternate Route 3	Mission Creek	T40 R21W S12	Mission Creek
Alternate Route 3	Fawn Lake	T132 R32W S34	Lower Turtle Creek
Alternate Route 3	Fawn Lake	T132 R32W S19	Fish Trap Creek
Alternate Route 3	Kettle River	T44 R20W S8	City of Willow River-Kettle River
Alternate Route 3	Bartlett	T133 R34W S23	Moran Creek
Alternate Route 3	Compton	T134 R36W S5	Deer Creek-Leaf River
Alternate Route 3	Twin Lakes	T48 R17W S21	Blackhoof River

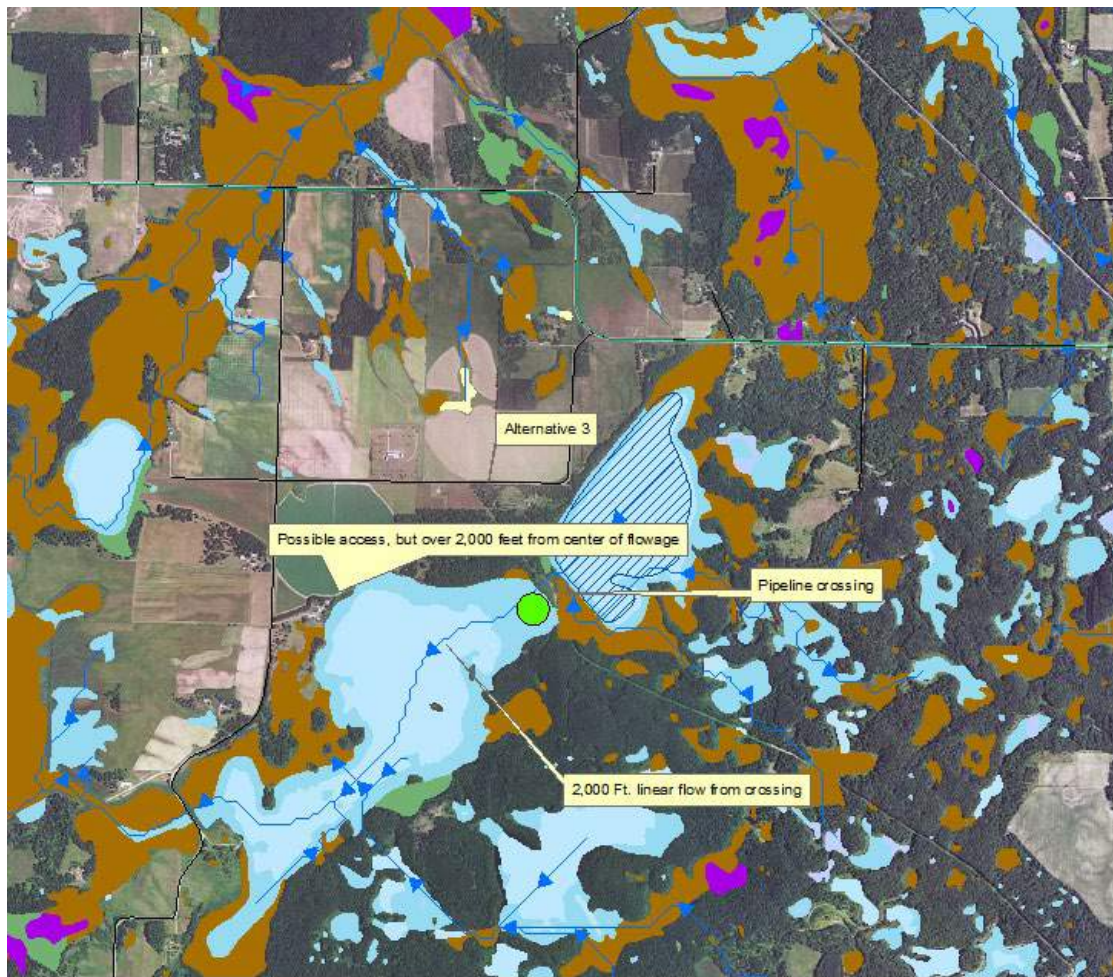


Figure F - Wetland layer identifies an open water wetland south of the pipe crossing that would likely receive oil from a leak. Wetland layer turned off in Figure G below. (Scale 1:24,001)

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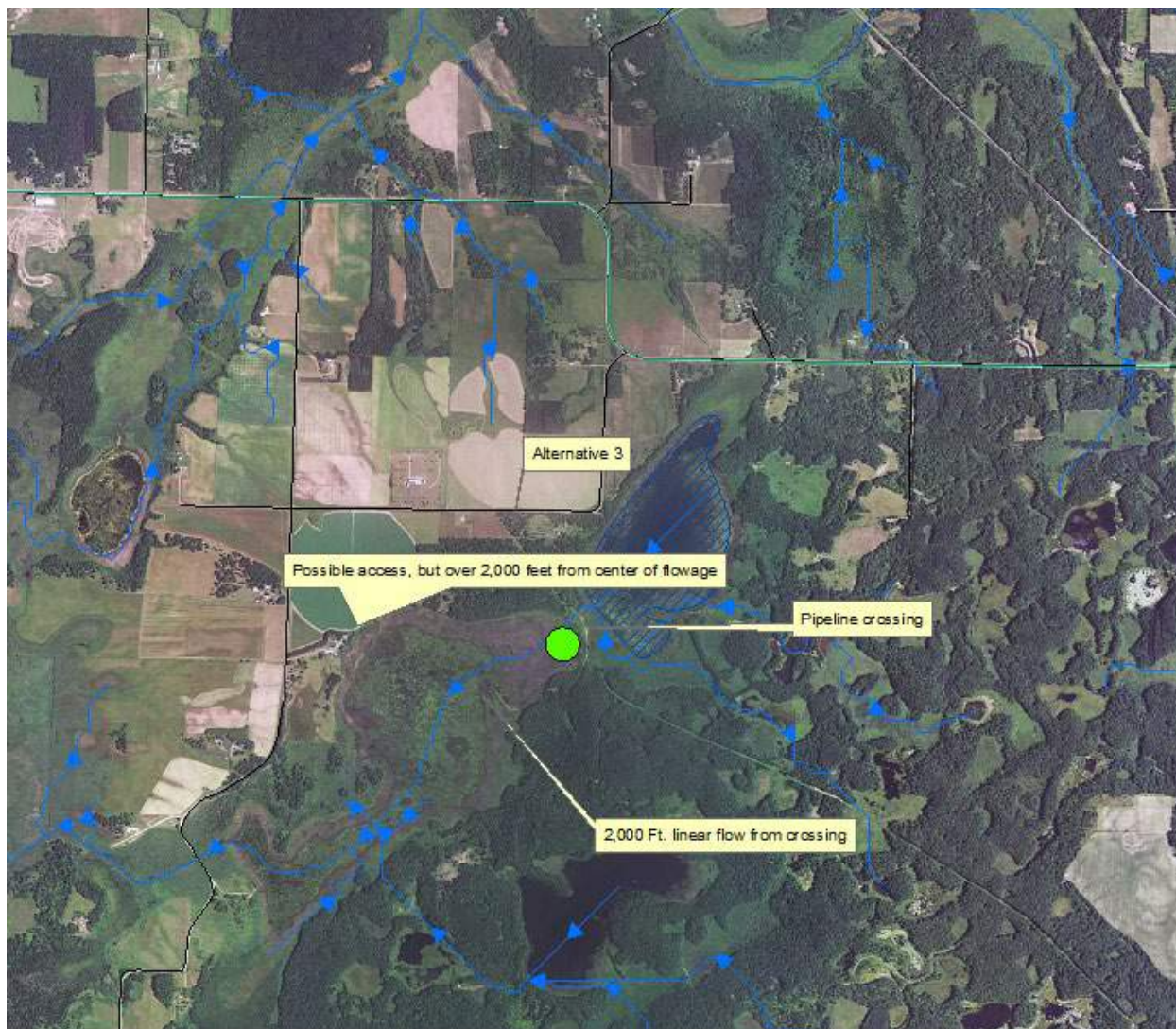


Figure G-With wetland layer turned off, one can see that the nearest access to the main stem of the flowage is roughly 2,000 feet to the west. If the wetland is traversable by boat or barge, which is possible given the wetland type (Type 3/5 shallow marsh and open water) then it is possible that access to material could be gained within the 2,000 foot buffer here. (Scale 1:24,001)

#### Alternative 4 Route

The Alternative 4 corridor enters the state in Traverse County just west of Wheaton, Minnesota, and runs to a southeast bearing until it exits the state south of Austin, Minnesota. A pipeline along this route would cross no water bodies lacking access within 2,000 feet of a potential leak site in surface water. There are very few water bodies crossed by this route in general over the proposed route.

#### National Hydrography Dataset

Even if access issues are taken out of the equation, the proposed Sandpiper route does not fare well in comparisons with alternative proposals based on examination of the National Hydrography Dataset

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(NHD) layer. Using the NHD layer, the proposed Sandpiper route would cross 20 water bodies, the Northern route would cross 10, the Alternative 3 route would cross 12, and the Alternative 4 route would cross 1 water body within the state of Minnesota. The NHD layer obviously does not identify all water bodies that are being crossed; however, it does identify water bodies that are part of a connected network of surface waters which may also be a good gauge of potential environmental impact if an incident were to occur.

Notably, the two routes in this analysis that crossed the fewest water bodies and put water resources at the lowest risk for environmental damage both aligned away from the Clearbrook terminal. Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest concentration of lakes, streams, and open-water wetlands in the state. Any route proposed out of Clearbrook, either south or east will cross dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

#### Summary of Route Analysis

There are numerous pipeline corridors that currently exist in Minnesota. Of those, there are several that cross far fewer water bodies and have better potential for access in the event of a release than the current Sandpiper proposal. MPCA staff examined three existing corridors in addition to the proposed Sandpiper route. While performing risk assessment, the current use of the corridors in question should also be considered, as much of the proposed Sandpiper route follows a corridor in which three other oil pipelines currently exist. Thus, not just one pipeline would be crossing sensitive water bodies with limited access, but four. The likelihood of an incident in which crude oil product is released is thus greater than what a single pipeline would entail. This is also true of the Northern route, in which numerous pipelines carrying crude oil exist. What has happened in the past with regard to location of pipeline routes is from this perspective unfortunate; MPCA staff believes that past routes have crossed too many water bodies in inaccessible areas, and the risk of large-scale impact as a result of a release incident is significant and ongoing. As this analysis shows, options posing a lesser risk to surface waters may be available.

Of the four possible routes that MPCA staff has examined, the proposed Sandpiper route and the previously followed Northern route show a significantly higher potential for environmental damage than either the Alternative 3 or Alternative 4 routes. It is also possible that an as-yet unexplored route could also score well relative to the Sandpiper proposal. The analysis of the Alternative 4 route is incomplete in that possible impacts outside of the Minnesota state boundaries were not looked at, so the surface waters avoided or protected by this route are only located in Minnesota per this analysis. It is also acknowledged that the MPCA staff analysis focused on the potential water quality and natural resource aspects of the project and not on other types of resources or land uses.

Nevertheless, the criteria adopted for this analysis show a clear difference in potential risk to surface waters between the Sandpiper proposal and other possible routes, and that in the event of a significant

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oil release, the Sandpiper route proposal has a significantly greater potential for large-scale environmental damage than other route proposals.

It is important to note that the construction of accesses through sensitive "no access" areas as a preventative measure can also create environmental hazards and damages and cannot be assumed to be an acceptable remedy. Rather, route proposals put forth now and in the future should take these factors into consideration and avoid continuing to cross surface waters at these locations. The minimization of surface water crossings in any location should become a priority for consideration when planning a route to construct a pipeline.

### Cumulative Impacts

The NEPA, Title 40, C.F.R. 1508.7, defines cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

The cumulative impacts review in the CEA should include current and proposed transmission line corridors, highway construction, water delivery systems, landfills, railroads, power generations plants, feedlots, and mine and mineral extraction sites which have the potential to interact with the proposed project. The CEA should also review the potential for significant cumulative effects related to past, present and future projects in the Duluth/Superior area involving increased transmission, storage, processing or refining activities, including the expansion of the Calumet Superior Refining facility in Superior, Wisconsin, or transportation of oil, fuels or products refined or manufactured from oil. Areas in which such impacts could occur include air quality in Duluth and the surrounding area in Minnesota, water quality as related to new or increased discharges or shipping activities, and transportation whether by truck, rail or ships.

The CEA should identify the impacts of past incidents associated with pipeline construction and operation, past incidents involving two or more associated utility lines, accidents or emergencies which may arise due to an unforeseen chain of events during the operational life of the pipeline, and effects within the project limits, and local and regional effects. Cumulative impacts may occur to:

- Human activities, such as recreation, agriculture and loss of prime farmland
- Wildlife including migratory birds and aquatic species
- Habitat and alterations to terrestrial vegetation
- Endangered species
- Air quality, including dust (particulate matter) and visual impacts
- Land values
- Watersheds
- Local and state socioeconomics

According to data provided by the Pipeline and Hazardous Materials Safety Administration (PHMSA), to date, there are 2,408 miles of crude oil pipeline in the state of Minnesota. More are planned within the next few years. Much of this infrastructure exists in corridors shared by several other pipelines carrying liquefied petroleum gas, natural gas, diluent for tar sands oil, refined petroleum product and other

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hazardous materials. In total, there are 10,475 miles of pipeline through the state. According to PHMSA, over the last 20 years, there has been an average of 14 spills from pipelines per year in Minnesota, an average of 1,812 barrels of hazardous liquids spilled per year in Minnesota, an average of 1,093 net barrels lost per year in Minnesota, and an average of \$3,135,572 of property damage annually in Minnesota. Five lives have been lost as a result of pipeline incidents.

The MPCA has numerous concerns about the number of pipelines planned to use the same corridors. With each water body crossed by a pipeline carrying crude oil, the risk of a major incident increases. A cursory review of the PHMSA web site identifies apparent causes of pipeline failure to include: incorrect operation, equipment failure, internal and external corrosion, third party damage (excavation), construction damage, material failure (pipe, fitting, weld), weld leak, and other unknown causes. For example, at the site of the Enbridge pipeline release in Marshall, Michigan, the National Transportation Safety Board found "that deficiencies in Enbridge's integrity management (IM) program contributed to the release of hazardous liquid..." (Federal Register, Volume 79, No. 87, Tuesday, May 6, 2014 (25990 – 25994)). See also Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010 (NTSB/PAR-12/01, PB2012-916501). Ultimately, the perspective should not be if a pipeline fails, but how will a release be mitigated when a failure occurs and at any given location (and the environmental susceptibility of that area to a release).

As explained above, MPCA examination of the proposed Sandpiper route and the previously used Northern route (Alberta Clipper) shows that significantly more open water bodies are crossed by the pipelines in these corridors than alternative routes. Far more of these crossings have no available access within a 2,000 foot buffer, meaning that release incidents are more likely to impact surface waters within that 2,000 buffer. Both the Sandpiper and Alberta Clipper routes are corridors for numerous crude oil pipelines; consequently, these routes are more vulnerable and less able to properly mitigate damage to aquatic environments. Whereas oil does travel through soils and overland, it travels significantly farther in aquatic environments.

Pipeline construction will involve soil excavation, vegetation removal, the crossing of water bodies, and the alteration or loss of wildlife habitat. These activities and the creation of new corridors can result in forest fragmentation affecting numerous species of wildlife that require expanses of undisturbed forest. Wetland perches may be broken causing alteration of natural hydrology in wetland areas, and stream geomorphology can be altered by damaging banks or stirring up stream bottoms. Herbicides used to control vegetation in pipeline corridors may adversely affect pollinators, particularly honeybees, resulting in hidden impacts that are difficult to trace, but nonetheless exist.

The construction, operation, maintenance, incidents and repairs associated with crude oil pipelines have been accompanied by significant environmental impacts. With more proposals in the works, more cumulative impacts can be expected to occur. Therefore, concerted effort is needed to take a close look at and carefully analyze the creation of common routes and corridors for pipeline projects where the risks of impacts to the environmental and human health can be minimized. The routes that have been used in the past pose substantial risks as noted above. Continuing to open more corridors will increase these risks and impacts. The MPCA would support and participate in a joint effort by state agencies to begin examining the feasibility of such a corridor, both for the purpose of expediting approval of future proposals and minimizing the potential for environmental impacts. A fresh look at the routing of energy transportation projects from a larger and more comprehensive perspective has the potential to make a

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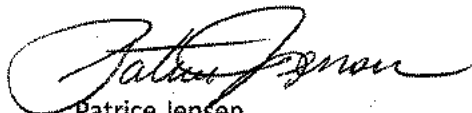
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significant contribution to streamlining the review and permitting processes as well as preventing and minimizing cumulative impacts.

**Conclusion**

It is requested that the comments provided in this letter and MPCA's letter dated April 4, 2014, be entered into the record to be addressed in the Draft CEA. We continue to look forward to assisting the Department of Commerce, as desired, during the preparation of the CEA for this project and its subsequent review upon its release. Through this process, the MPCA seeks to obtain further additional information to facilitate the MPCA staff review of the Project, well in advance of the time a decisions on the required MPCA authorizations are needed to commence construction. Ultimately, it is the responsibility of North Dakota Pipeline Company LLC to secure any required permits and to comply with any requisite permit conditions. If you have any questions, please contact me at 651-757-2465.

Sincerely,



Patrice Jensen  
Planner Principal  
Environmental Review  
Resource Management and Assistance Division

PJ:bt

- cc: Jamie Schrenzel, MDNR  
Desiree Morningstar, U.S. Army Corps of Engineers  
Sara Ploetz, Enbridge  
Reed Larson, MPCA  
Bill Sierks, MPCA  
Laurel Mezner, MPCA  
Jim Courneya, MPCA  
Brian Livingston, MPCA  
Jeff Udd, MPCA  
Steve Lee, MPCA  
Doreen Fier-Tucker, MPCA  
Pat Carey, MPCA  
Catherine Neuschler, MPCA  
Craig Affeldt, MPCA



85 7TH PLACE EAST, SUITE 500  
 SAINT PAUL, MINNESOTA 55101-2198  
 MN.GOV/COMMERCE  
 651.539.1500 FAX: 651.539.1547  
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## BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

### COMMENTS AND RECOMMENDATIONS OF MINNESOTA DEPARTMENT OF COMMERCE ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS STAFF

DOCKET NO. PL-6668/PPL-13-474

Date: July 16, 2014

EERA Staff: Larry B. Hartman.....651-539-1839  
 Deborah R. Pile.....651-539-1837

#### **In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota**

**Issue(s) Addressed:** These comments and recommendations discuss the route alternative proposals received during the public comment period ending May 30, 2014, and include recommendations as to which alternatives the Department of Commerce Energy Environmental Review and Analysis (EERA) staff believes are appropriate for further consideration.

#### **Documents Attached:**

1. Project Overview Map
2. Minnesota Pipeline Existing Route Map
3. Pipeline Routing – Full Permitting Process
4. Sandpiper Alternative Routes Summary Report
5. System Alternatives Map

Additional documents and information can be found on eDockets:

<https://www.edockets.state.mn.us/EFiling/search.jsp> (13-474) and on the Department of Commerce's energy facilities website for the Sandpiper Pipeline Project at: <http://mn.gov/commerce/energyfacilities/Docket.html?Id=33599>.

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-539-1530 (voice).

## **Introduction and Background**

On November 8, 2013, North Dakota Pipeline Company LLC (NDPC or the Company) filed applications for a Certificate of Need (13-473) and Routing Permit (13-474) with the

Commission for the Minnesota portion of the Sandpiper Pipeline Project – a proposed 612-mile pipeline to transport crude oil from Tioga, North Dakota, to existing terminals in Clearbrook, Minnesota and Superior Wisconsin.<sup>1</sup>

NDPC's application for a pipeline route permit was filed with the Commission in accordance with the requirements (Minnesota Rules (7852.0800 through 7852.1800 and 7852.2000) to construct and operate the Minnesota portion of the Sandpiper Pipeline Project, comprised of approximately 75 miles of 24-inch pipeline and approximately 224 miles of 30-inch pipeline, along with two (2) 150,000-barrel crude oil storage tanks, 4 transfer pump stations, including all valves and appurtenances, and one (1) new pump station in proximity to Enbridge's existing terminal facilities in Clearbrook (Project). The Sandpiper Pipeline Project, as proposed by NDPC will cross the Minnesota counties of Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin and Carlton.<sup>2</sup>

On November 14, 2013, the Commission issued a notice soliciting comments on the completeness of the route permit application for the project.<sup>3</sup>

On January 15, 2014, the Commission met to consider acceptance of the route permit application. On February 11, 2014, an Order of the Commission accepted the application as complete. The Order also authorized the Department of Commerce Environmental Review and Analysis (EERA) staff to: 1) facilitate the development of route proposals beyond those proposed by NDPC; 2) to prepare an analysis of alternative route proposals on the basis of their harm to the environment; and 3) take other procedural steps to enable an evaluation of the Company's proposed pipeline route.<sup>4</sup>

On January 31, 2013, NDPC updated its route permit application, environmental information supplement and route maps.<sup>5</sup>

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<sup>1</sup> Enbridge Pipelines (North Dakota) LLC submitted the initial filing, but later changed its name to North Dakota Pipeline Company LLC; see NDPC Reply Comments (December 16, 2013), eDockets at [201312-94650-02](#).

<sup>2</sup> Enbridge Pipelines North Dakota LLC, now d/b/a North Dakota Pipeline Company (NDPC or the Company) Application to the Minnesota Public Utilities Commission for a Route Permit for the Sandpiper Pipeline Project and Associated Facilities in Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin and Carlton, November 8, 2013, eDockets, Document ID Numbers [201311-93532-01](#), [201311-93532-02](#), [201311-93532-03](#), [201311-93532-04](#), [201311-93532-05](#), [201311-93532-06](#), [201311-93532-07](#), [201311-93532-08](#), [201311-93532-09](#), [201311-93532-10](#), [201311-93535-01](#), [201311-93535-02](#), [201311-93535-03](#), [201311-93535-04](#), [201311-93535-05](#), [201311-93535-06](#), [201311-93535-07](#), [201311-93535-08](#), [201311-93535-09](#), [201311-93535-10](#), [201311-93536-01](#), [201311-93536-02](#), [201311-93536-03](#), [201311-93536-04](#), [201311-93536-05](#), [201311-93536-06](#), [201311-93536-07](#), [201311-93536-08](#), [201311-93536-09](#), [201311-93536-10](#), [201311-93537-01](#) [hereinafter Route Permit Application].

<sup>3</sup> Notice of Comment Period on Route Permit Application Completeness, November 14, 2013, eDockets, Document ID [201311-93681-01](#).

<sup>4</sup> Order Finding Application Substantially Complete, February 11, 2014. See eDockets, Document ID [20142-96351-01](#), p.2.

<sup>5</sup> Revised route permit application, See eDockets, Document ID Numbers [20141-96101-10](#), [20141-96101-01](#), [20141-96101-02](#), [20141-96101-03](#), [20141-96101-04](#), [20141-96101-05](#), [20141-96101-06](#), [20141-96101-07](#), [20141-96101-08](#); Revised route permit aerial photography and U.S.G.S. Maps (Map # 0-0) (M 32-38) [20141-96101-09](#), (M 39-45) [20141-96104-01](#), (M 46-52) [20141-96104-02](#), (M 53-59) [20141-96104-03](#), (M 60-66) [20141-96104-04](#), (M 67-74) [20141-96104-05](#), (M 75-82) [20141-96104-06](#), (M 83-89) [20141-96104-07](#), (M 91-



Notice of Application Acceptance and Public Information (Scoping) Meetings was issued on January 31, 2014.<sup>6</sup>

***Project Purpose***

NDPC indicates in its route permit application that “The purpose of the Project is to transport growing supplies of oil produced in North Dakota to the terminals in Clearbrook, Minnesota, and Superior, Wisconsin. From these terminals, the crude oil can be shipped on various other pipelines, eventually providing refineries in Minnesota, and other states in the Midwest and the East Coast with crude oil.” At Clearbrook, the crude oil will be delivered to interconnected facilities operated by Minnesota Pipeline Company for delivery to the Flint Hills and St. Paul Park refineries in the Twin Cities. At Superior, the crude oil will be delivered into the Enbridge Mainline System and other third party pipelines for delivery to refineries in the Midwest and the East Coast.<sup>7</sup>

***Project Description (Proposed Pipeline, Associated Facilities and Land Requirements)***

NDPC proposes to construct the project, known as the Sandpiper Pipeline Project (Project or Sandpiper) to transport Bakken and Three Forks crude oil from growing production regions in the Williston Basin of eastern Montana and western North Dakota. The Project begins at NDPC’s Beaver Lodge Station, south of Tioga, North Dakota, and extends to a new terminal facility to be constructed west of Clearbrook, Minnesota, and then on to an Enbridge affiliate’s terminal and tank farm in Superior, Wisconsin. From the Superior terminal, the crude oil will be transported to other refining markets via the Enbridge Mainline System. The Sandpiper Project will also provide for redundant service for deliveries to the Minnesota Pipe Line Company’s facilities during routine maintenance activities on NDPC’s existing Line 81, or to satisfy additional demand from refineries connected to the Minnesota Pipe Line System.

**Pipeline**

The Project is comprised of a new 612-mile 24-inch and 30-inch outside diameter crude oil pipeline and associated facilities described as follows. Approximately 299 miles of the Project will be located in Minnesota. (Attachment 1, Project Overview Map.)

Beginning at the North Dakota border in Polk County (Milepost 299), approximately two miles south of Grand Forks, and extending east to Clearbrook (MP 375) across portions of Polk, Red Lake and Clearwater county, approximately 75 miles of 24-inch outside diameter (OD) steel pipe, with an average annual capacity of 225,000 barrels per day (bpd), to the extent feasible, will be located parallel and adjacent to NDPC’s existing Line 81, which currently transports approximately 150,000 bpd to Clearbrook.

The Sandpiper Pipeline segment between Clearbrook and the Wisconsin border, as proposed by NDPC, is approximately 224 miles across the counties of Clearwater, Hubbard, Cass, Crow Wing, Aitkin and Carlton, and will be 30-inch OD steel pipeline and have an annual average capacity of 375,000 bpd.

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98) [20141-96104-08](#), (M 99-106) [20141-96104-09](#), (M 107-114) [20141-96104-10](#), (M 115-121) [20141-96105-01](#), (M 122-123) [20141-96105-02](#).

<sup>6</sup> Notice of Application Acceptance, dated January 31, 2014. See eDockets, Document ID [20141-96003-01](#).

<sup>7</sup> NDPC Application for Routing Permit, January 31, 2014, See eDockets, Document ID [20141-96101-01](#), pp. 4-5.

Between Clearbrook and the city of Hubbard (MP 375 - 440), the NDPC preferred route generally parallels the existing multiple line pipeline rights-of-way in which Minnesota Pipe Company (MPL) has three to four existing pipelines, depending on location. The MPL maintained right-of-way is approximately 100 feet in width. (Attachment 2, Minnesota Pipeline Existing Route Map)

Between the Hubbard and the Wisconsin border, the EPND preferred route turns east, following portions of existing electrical transmission and railroad rights-of-way. This portion of the Project also requires the most new right-of-way.

The minimum depth of burial for the pipeline is between 36 to 54 inches or more, depending on pipeline location.

The X70 Carbon steel pipe used for the 24-inch portion of the pipeline will have a nominal wall thickness of 0.375 inches, while the 30-inch pipe will have a wall thickness of 0.469 inches. The pipeline will have an operating pressure of 1,352 pounds per square inch gauge (psig) at station discharge. The maximum allowable operating pressure is 1,480 psig.

#### Associated Facilities

The Project will also include the installation of associated facilities (or appurtenances). Associated facilities will include valves and flanges and a cathodic protection to prevent corrosion on the pipelines. Based on preliminary engineering design and environmental survey work, approximately 15 mainline valves are currently planned to be installed in Minnesota. Valve installation locations are typically near major rivers, other environmentally sensitive areas, population centers, and pump stations. Pipeline markers will also be installed at various locations (e.g., road crossings) in accordance with applicable federal and state regulations.

As part of the Project, NDPC also proposes to develop a new terminal facility approximately three miles west of Clearbrook. The new terminal will consist of two crude oil storage tanks holding approximately 150,000 barrels (bbls) or 6,300,000 gallons each, two 500 horse power (HP) injection pumps to move up to 150,000 barrels per day (bpd) from the existing NDPC Line 81 into Sandpiper, two 650 HP transfer pumps for delivery to NDPC, and three sets of leak detection meters (1 set for delivery from the Sandpiper to NDPC tankage, 1 set for Line 81 delivery to NDPC tankage, and 1 set for flow injection NDPC tankage into the Sandpiper pipeline). Also included are all associated terminal piping, interconnections, valves, manifold and sumps, as well as an electrical substation, a fire suppression system (e.g. building, pond and piping), a maintenance building and a cold storage building. Schematic drawings of the new terminal facilities are depicted on station plat drawings in Appendix G.3 of the Environmental Information Report (EIR).

The pump station facilities include four 5,500 HP pumps, four 5,750 HP Variable Frequency Drives (VFD), a pump shelter, four VFD buildings, and a switchgear building. Additionally, it will include two coriolis meters, a 24-inch PIG receiver and a 30-inch PIG launcher, as well as associated pump station piping and valves. See Appendix G.3 of the EIR for schematic drawings.

Launch and receiver traps along with one of the mainline valves will be installed at a site near Pine River in Cass County. See schematic in Appendix G.3 of the EIR

#### Land Requirements (Right-Of-Way Width and Temporary Work Space(s))

Appendix F in the EIR provides schematic drawings for the various right-of-way requirements.<sup>8</sup>

#### Right-of-Way Requirement – West of Clearbrook

From the North Dakota border to the Clearbrook Terminal, the Project will generally be constructed and installed adjacent to the existing NDPC right-of-way (Line 81). Typically, the right-of-way requirements in upland areas include up to 55 feet of permanent easement, of which 25 feet would be new easement and 65 feet would be temporary workspace, for a total land requirement width of 120 feet. In wetland areas, the temporary workspace requirement would be reduced to 40 feet, for a total land requirement of 95 feet.

NDPC's design configuration and anticipated construction execution methods are intended to take advantage of the proximity of the Project to the existing NDPC pipeline west of Clearbrook to minimize new right-of-way requirements.

#### Right-of-Way Requirements – East of Clearbrook

From Clearbrook to the city of Hubbard, the NDPC preferred route follows or parallels the Minnesota Pipeline Company right-of-way. Between Hubbard and the Wisconsin border, the NDPC preferred route generally follows or parallels existing electrical transmission and railroad lines. Where it is not possible to co-locate with existing rights-of-way, the pipeline will be constructed on new right-of-way (greenfield areas). The proposed construction footprint is approximately 120 feet for standard pipeline construction in upland areas, including 50 feet of new permanent easement and 70 feet of temporary workspace. In wetland areas, the temporary workspace requirement would be reduced to 40 feet, for a total land requirement of 95 feet.

Both the permanent easement and the temporary workspace areas may be returned to pre-existing uses by the landowners if they do not impact safe operation and inspection of the pipeline.

In certain limited areas, the right-of-way encounters environmental features (such as extended wetlands) that require special construction methods. Typically, this results in a maximum construction footprint of 95 feet, including 50 feet of permanent easement and 45 feet of temporary workspace. NDPC has presently identified approximately 9 miles of potential right-of-way in the following areas that contain environmental features that will necessitate special construction methods:

- MP 395 to 396
- MP 415 to 416
- MP 460 to 462

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<sup>8</sup> See eDockets, Document ID [201311-93532-10](#), (6 pages).

- MP 484 to 485
- MP 496.5 to 520
- MP 546 to 555
- MP 558 to 562

## **Regulatory Process and Procedures**

In Minnesota, no person may construct a high pressure petroleum pipeline without a pipeline routing permit issued by the Commission unless the pipeline is exempted from the Commission's routing authority (Minnesota Statute 216G.02 Subd.2.). A high pressure pipeline is a pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids or a pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas. The proposed project will consist of approximately 300 miles of 24-inch and 30-inch pipe; therefore, the project requires a route permit from the Commission.

The proposed Sandpiper Project also requires a Certificate of Need from the Commission, per Minnesota Statute 216B.2421. NDPC applied to the Commission for a certificate of need on November 8, 2013.<sup>9</sup>

### ***Route Permit Application Review***

Commission review of NDPC's Sandpiper Route Permit application is taking place pursuant to the requirements of Minnesota Statute 216G.02 and the pipeline route selection procedures in Minnesota Rules, 7852.0800 to 7852.1900, as illustrated in Attachment 3.<sup>10</sup>

Acceptance of the application allowed Commission and Department of Commerce EERA staff to initiate the procedural requirements of Minnesota Rules, 7852 through 7852.1900.

As with previous pipeline route permit proceedings under the full process (MinnCan and Enbridge's Alberta Clipper Projects), the Commission authorized EERA staff to receive and evaluate all route or route segment proposals submitted for consideration. Proposals are then submitted to the Commission for a final determination as to whether they should be accepted for consideration at the public hearing. Proposals accepted by the Commission will be considered by the Office of Administrative Hearings (OAH) at the contested case hearing and evaluated in the Comparative Environmental Analysis prepared for the project.

### ***Environmental Review Requirements for Pipelines***

The review processes established for pipelines, Minnesota Rules Chapter 7852, includes the Environmental Assessment Supplement as part of the pipeline routing permit application, a scoping process and comparative environmental analysis to fulfill the intent and requirements of the Minnesota Environmental Policy Act and Minnesota Rules parts 4410.0200 to 4410.6500.

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<sup>9</sup> NDPC LLC Application to the Minnesota Public Utilities Commission for a Certificate of Need for the Sandpiper Pipeline Project, November 8, 2013, See eDockets at 13-373.

<sup>10</sup> Attachment 3 or See eDockets, Document ID [20146-100299-01](#).

The Minnesota Environmental Quality Board (EQB) developed and approved of the pipeline routing rules (Chapter 7852) as an alternative form of environmental review pursuant to the requirements of Minnesota Rules 4410.3600 [Alternative Review] on February 16, 1989.

Critical to development and approval of the pipeline routing rules was incorporation of the equivalent environmental review requirements established by Minnesota Rules 4410.3600, subp1., items A. through H., to allow for EQB approval of the pipeline rules as an alternative form of environmental review and also to provide for timely review and elimination of duplication.

The EQB determined that the pipeline routing rules satisfied all the conditions for approval as a substitute form of environmental review as provided by Minn. Rules 4410.3600, subp.1, items A. through H. Consequently, pipelines subject to the routing rules are not reviewed through environmental assessment worksheets (EAWs) or environmental impact statements (EISs), but receive equivalent review under the routing and permitting process established by the pipeline routing rules.

This alternative form of environmental review requires preparation of a comparative environmental analysis, which evaluates all of the alternative routes authorized by the Commission for consideration at public hearing.

#### Alternative Route Analysis (Minnesota Rules 7852.1500)

The Commission, in its February 11, 2014, “Order Finding Application Substantially Complete and Varying Timelines; Notice of Hearing”<sup>11</sup> at VII. Comparative Environmental Analysis, authorized EERA staff to prepare the comparative environmental analysis (CEA), along with an initial technical analysis of the record. The Commission stated that the CEA should provide a tool to assist the public and agencies in understanding the environmental consequences of the various alternatives.

The Commission further stated that the CEA should:

- Analyze the environmental consequences of each route and route segment alternative.
- Include a discussion of the proposed project’s compliance with applicable statutes and rules.
- Analyze how well each route meets the routing permit selection criteria set forth in statute and rule.
- Identify routes with common or similar environmental consequences.
- Identify routes that:
  - Require no environmental mitigation
  - Have negative environmental consequences that would need mitigation, together with alternative mitigation strategies
  - Have negative environmental consequences that cannot be mitigated
  - Have fatal flaws.

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<sup>11</sup>Commission Order, dated February 11, 2014, See eDockets, Document ID [20142-96351-01](#), p. 8.

- Include recommendations for permit language, including language specifically drafted for certain routes.

Minnesota Rule 1405 requires that the comparative environmental analysis be submitted as pre-filed testimony.

**Public Information (Scoping) Meetings (Minnesota Rule 7852.1300)**

After acceptance of an application for pipeline route selection, a public information/scoping meeting is held in each county crossed by the applicant’s preferred pipeline route, unless a variance is granted by the Commission, to explain the route designation process, to respond to questions raised by the public, and to solicit comments on route and route segment proposals and other issues that should to be examined in greater detail in the comparative environmental analysis prepared for the project.

Notice of the information meetings was directly mailed to all landowners along the preferred route identified by NDPC in its application, and was published in 22 newspapers in proximity to the proposed project, including both the St. Paul Pioneer Press and Star Tribune.<sup>12</sup> Notice also appeared in the *EQB Monitor*, Vol. 38, No. 4, February 17, 2014.<sup>13</sup>

Between March 3, 2014, and March 13, 2014, Commission and EERA staff held seven public information/scoping meetings in seven of the nine counties crossed by the proposed Sandpiper Project.

**Information/Scoping Meetings for the Sandpiper Project**

COUNTY	CITY	DATE AND TIME	ATTENDANCE	Oral Record of Information Meetings (eDocket ID #, pages)
Polk	Crookston	Monday, March 3, 2014 6:00-9:00pm	90 to 95	<a href="#">20143-97800-01</a> / 165 pages
Polk	McIntosh	Tuesday, March 4, 2014 11:00am-2:00pm	30 to 35	<a href="#">20143-97801-01</a> / 88 pages
Clearwater	Clearbrook	Tuesday, March 4, 2014 6:00-9:00pm	45 to 50	<a href="#">20143-97803-01</a> /135 pages
Hubbard	Park Rapids	Wednesday, March 12, 2014	130 to 140	<a href="#">20143-97805-01</a> 140

<sup>12</sup> Public Information Meeting Notice Compliance, See eDockets, Document ID [20144-98307-02](#).

<sup>13</sup> *EQB Monitor*, Volume 38, No. 4. See eDockets, Document ID [20146-100298-01](#).

		11:00am-2:00pm		pages
Cass	Pine River	Wednesday, March 12, 2014 6:00pm-9:00pm	70 to 80	<a href="#">20143-97807-01</a> / 102 pages
Aitkin	McGregor	Thursday, March 13, 2014 11:00am-2:00pm	90 to 100	<a href="#">20143-97811-01</a> / 145 pages
Carlton	Carlton	Thursday, March 13, 2014 6:00pm-9:00pm	120 to 130	<a href="#">20143-97813-01</a> / 152 pages

The format of the seven information/scoping meetings was the same. All meetings started with an overview presentation provided by the Commission’s public advisor, followed by a brief North Dakota Pipeline Company overview of its Sandpiper Project, then Department of Commerce, Energy Environmental Review and Analysis (EERA) staff provided an overview of the Commission’s route permitting process, which was followed by questions and comments from the public and responses from Commission staff, NDPC and EERA staff.<sup>14</sup>

The initial comment period, as provided for in the public notice, closed April 4, 2014. On April 14, 2014, the Commission issued a “Notice of Extended Comment Period” for the NDPC Pipeline Routing Permit in order to allow the public to submit additional comments on potential human and environmental impacts and alternative pipeline routes to be considered in the comparative environmental analysis. The new deadline for filing comments closed May 30, 2014.

Minnesota Rule 7852.1300 also requires a second round of public information meetings to be held prior to the contested case hearing. These meetings, as well as hearings, must be held in each county through which a route accepted by the Commission for hearing passes to explain the route designation process, present major issues, and respond to questions raised by the public. In recent pipeline proceedings (MinnCan (05-2003) and Alberta Clipper (07-360 and 07-361)), the second public information meeting was held immediately prior to the start of the contested case hearing.

***Comments Received***

Approximately 1087 comments from 940 unique commenters and organizations were received by the close of the comment period on May 30, 2014. Comments were received through various methods including public meeting oral comments, documents submitted to the court reporter and comments submitted by mail, email and fax.

Comments were received from numerous sources, including:

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<sup>14</sup> Commission, NDPC and DOC EERA Power Point Presentation, See eDockets ID # [20142-96875-01](#)

- Tribal: Honor the Earth, Mawinzo AsiniGaaazo Berry Pickers, the Minnesota Chippewa Tribe, and White Earth Reservation Tribal Council.
- State Agencies: Minnesota Department of Transportation (MnDOT), Minnesota Department of Natural Resources (DNR), the Minnesota Pollution Control Agency (PCA) and Minnesota Representative Steve Green, District 2B.
- Local Units of Government: Hubbard County, Polk County, and the townships of Arago, Badora, Clover, Lake Emma, Todd and Wrenshall.
- Organization and Business Comments: Association of Cass County Lakes, Big Sandy Lake Association, Carlton County Land Stewards, Detroit Lakes Chamber of Commerce, EOG Resources, Friends of the Headwaters, Hubbard County COLA, Kennecott Exploration Company, Long Lake Association, Minnesota Backcountry Hunters and Anglers, Minnesota Coalition of Lake Associations; Minnesota League of Woman Voters, Minnesota Trout Unlimited, Palmer Lake Organization, Park Rapids League of Woman Voters, Pine River Watershed Alliance, RE/MAX First Choice, The Climate Crisis Coalition of the Twin Cities, Tidal Energy Marketing, Trout Unlimited, Northwestern Minnesota, University of Minnesota Northwest Research and Outreach Center, and White Fish Area Property Owners Association.
- Citizen Comments: Numerous written comments were received from citizens and have been filed alphabetically by last name of the individual commenting.
- North Dakota Pipeline Company

Comments generally fell into the following broad categories:

- **General Opposition:** Opposition was explicitly expressed, whether solely or throughout their comment
- **General Support:** Support was explicitly expressed, whether solely or throughout their comment
- **Wants an EA/EIS:** Request for an EA or EIS process was explicitly expressed by many commenters in reference to the fact that a CEA is planned to be conducted in lieu of an EA or EIS.
- **Extend Comment Period and/or Hold Additional Public Meetings:** Expressed a desire to extend the comment period and to hold additional public meetings to allow for more communication of the project.
- **Need of Project:** Questioned the need for the project.
- **State Parks:** State park land preservation, proximity to it, and comments about routing through state park land
- **Trees/Forests:** Preserving or avoidance of trees and mitigation comments or concerns
- **Wildlife:** Concerns for wildlife and avoidance of impacts to wildlife
- **Impacts to Water:** Preserving water quality and water resources including avoidance of lakes, rivers, streams, wetlands, wells and watersheds



- **General Environmental:** General environmental concerns without a specific concern or location stated or a generalized list of environmental issues; comments on general land use
- **Soils:** Soil concerns for the land use and concerns for soils that transport oil more quickly in the event of a leak
- **Organic Farming:** Specific mention of organic and/or sustainable farming
- **General Agriculture:** Land used for economic cultivation (agriculture) including comments with concerns for wild rice as an agricultural commodity.
- **Health and Safety:** Safety concerns during construction and operation of the pipeline and comments stating general health concerns related to human life
- **Aesthetics:** Visual and appearance concerns during and after construction
- **Tribal and Cultural Resources:** Concerns related to a specific tribe, tribal activity (i.e., wild rice as a cultural way of life) or general cultural resources concerns
- **Property Values and Landowner Rights:** Impact to the value of a home and/or property with the construction of the new pipeline and questions/concerns for the treatment of property owners and their rights
- **Cost of Easement:** Questions or concerns on cost of easement purchases by Enbridge
- **Socioeconomics and Tourism:** Impacts to tourism and the social economics of a community and/or region
- **Preference for an Alternative Route:** Preference for an alternative route including an existing alternative route already proposed or a new route proposed by the commenter.

### Comment Categorization Summary

Special attention was paid to identify each individual comment whether it was submitted multiple times by different people or the same person submitted multiple comments.

Comment Category	Citizens	Organizations and Businesses	Local Units of Government	State Agencies	Tribal	Totals
General Opposition	402	55	1	0	1	459
General Support	30	5	1	1	0	37
Wants an EA/EIS	97	58	0	1	1	157
Extend Comment Period/More Mtgs	53	10	5	0	1	69
Need of Proj	20	1	0	0	0	21
State Parks	33	2	1	0	0	36
Trees/Forests	120	11	0	1	0	132
Wildlife	139	54	1	0	1	195
Impacts to Water Quality	320	29	4	2	2	357
General Env Concern	307	69	5	1	2	384
Soil and Soil Erosion	89	5	1	1	0	96
Organic Farms	133	9	1	0	0	143
General Agricultural Impacts	188	51	1	1	2	243
Health and Safety	93	10	2	1	1	107
Aesthetics	5	0	0	0	0	5
Tribal Concerns	83	45	1	0	4	131
Property Values	48	1	0	0	0	49
Cost of Easement	18	0	0	0	0	18
Tourism	51	5	1	0	0	57
Preference for an Alternative Route	309	30	4	2	2	347

### ***Route and Route Segment Proposals and Acceptance by the Commission***

The Commission is now being asked to determine what routes and route segments will be considered at the contested case hearing for the Sandpiper Project and analyzed in the Comparative Environmental Analysis (CEA).

Route proposal acceptance is addressed in Minnesota Rules 7852.1400, Subp. 1 as follows:

The Commission shall accept for consideration at the public hearing the routes and route segments proposed by the applicant and may accept for public hearing any other route or route segment it considers appropriate for further consideration. No route shall be considered at the public hearing unless accepted by the Commission before the notice of the hearing. Routes shall be identified by the Commission in accordance with part 7852.1600. A proposer of a route or route segment that the Commission has accepted for consideration at the hearing shall make an affirmative presentation of facts on the merits of the route proposal at the public hearing.

If the proposal contains the required information, the Commission must consider acceptance of the route proposal for public hearing. Minnesota Rule 7852.1400 provides that no route shall be considered at the public hearing unless accepted by the Commission before notice of the hearing.

The comment period for identification of route or route segment alternatives to the proposed North Dakota Pipeline Company (Enbridge) Sandpiper pipeline ended May 30, 2014. During the comment period, approximately 1090 comments were received by letter, email and verbal communications recorded by a court reporter at seven public meetings. The written and verbal comments were screened to determine whether commenters had proposed alternatives, yielding a total of 62 proposals. As necessary, commenters were contacted to clarify the location and purpose of their proposals.

The attached *Sandpiper Alternative Routes Summary Report*, prepared by the Department of Commerce Energy Environmental Review and Analysis (EERA) with assistance from HDR Inc., is a summary of those system and route alternatives; it includes recommendations on routes or route segments for consideration at public hearing and evaluation in the CEA pursuant to Minnesota Rule 7852.1400, Route Proposal Acceptance.

The 62 proposals were then sorted into two categories, system alternatives and route alternatives, based on an evaluation of whether the proposal addressed the purpose of the Sandpiper project as proposed by NDPC.

### **System Alternatives**

A system alternative is an alternate that proposes a different configuration of pipelines for moving oil from the Williston Basin than the Applicant's proposal. It is a wholly separate or independent route from the Applicant's proposed route and is, in essence, a different project than the one proposed by the applicant.

Enbridge is requesting a route permit to transport oil produced in North Dakota to the terminals in Clearbrook, Minnesota, and Superior, Wisconsin. Minnesota Rule 7852.0100, subpart 31, defines a route as “the proposed location of a pipeline between two end points.” In this docket, Enbridge has requested a route from the North Dakota border to Clearbrook and from Clearbrook to Superior. Thus, the project, for route permit application purposes, is defined by these three points.

However, eight alternatives proposed during the comment period do not connect with one or more of these three points (*Sandpiper Alternative Routes Summary Report*, Table 1 and Figure 1). The proposed system alternatives include routing the pipeline far north or far south of the applicant’s proposed route. None of the system alternatives would connect to the new Clearbrook terminal. Three of the system alternatives do not connect into Enbridge’s Superior Terminal.

**Proposed System Alternatives (SA-01 through SA-08)** (See *Sandpiper Alternative Routes Summary Report* Figure 1)

**SA-01.** SA-01 was offered by Robert and Karen Lindesmith; it calls for the pipeline upon entering Minnesota to proceed in a northeasterly direction to enter Canada, with no clear connection to terminals in Clearbrook or Superior. If this alternative were to enter the United States at some point east of Lake Superior and return to Superior, it would be approximately 1,200 miles in length. The proposers offered no additional information in support of this system alternative.

EERA staff believes that this system alternative fails to meet the applicant’s stated project purpose, as it does not connect to a terminal in Clearbrook terminal and may or may not terminate at the Superior terminal. Therefore, EERA staff recommends that the Commission not accept SA-01 as proposed for further consideration in this proceeding.

**SA-02.** SA-02 was offered by Sharon Natzel, Long Lake Area Association, as a system alternative to avoid impacting ground water resources and the lakes area of northern Minnesota. SA-02 is approximately 340 miles in length and attempts to follow existing road rights-of-way and areas without extensive water resources. Although SA-02 does not connect to a terminal in Clearbrook, it does connect back into Enbridge’s Mainline Corridor and does terminate in Superior.

**SA-03.** SA-03 was suggested by the Minnesota Pollution Control Agency (PCA) as a system alternative to avoid the lakes areas crossed by NDPC’s preferred route and to provide for a new terminal in the Crookston area, so as to provide for greater routing flexibility for future pipeline projects.

As proposed, this system alternative would follow the existing 24-inch Viking natural gas pipeline southward to Clay County, then southeast across the counties of Becker, Ottertail, Wadena, Todd, Morrison, Benton, Milles Lacs and Isanti before proceeding northward generally following either a 8-inch Magellan petroleum products pipeline or a Northern Natural Gas Pipeline, in proximity to I-35 through the counties of Chicago, Pine and Carlton before

connecting with one of the proposed Sandpiper route alternatives in Carlton County. SA-03 as proposed is approximately 360 miles long.

Similar to other system alternatives proposed, it does not provide for a connection to a terminal in Clearbrook. If the new proposed Clearbrook terminal were moved westward to the Crookston area, as suggested by the proposer, a pipeline would still be required to extend from a Crookston terminal to Clearbrook in order to provide oil to MinnCan and Minnesota Pipeline for transport to refineries in the Twin Cities.

**SA-04.** System alternative SA-04, suggested by Friend of the Headwaters (FOH), is proposed to follow the existing Alliance Pipeline, a hot gas natural gas pipeline, with an outside diameter of approximately 42-inches built in 2000 that traverses North and South Dakota, Minnesota, Iowa and Illinois and is approximately 1,050 miles in length. SA-04 does not connect with terminals in Clearbrook or Superior. This alternative was proposed to avoid the lakes areas traversed by the NDPC Sandpiper proposed route. The Alliance Pipeline route crosses the Minnesota counties of Traverse, Stevens, Swift, Chippewa, Kandiyohi, Renville, Sibley, Nicollet, Blue Earth, Waseca, Freeborn and Mower, crossing primarily agricultural land in Minnesota. The Alliance Pipeline was permitted by the Federal Energy Regulatory Commission (FERC) and was the first pipeline project in Minnesota to require an agricultural mitigation plan.

**SA-05.** SA-05, also suggested by FOH, if it were to connect to Superior would be approximately 1,100 miles in length. As with SA-04, it also follows a gas pipeline, the Northern Border Natural Gas Pipeline that cuts across southwestern Minnesota, through the counties of Lincoln, Lyon, Murray, Cottonwood, Jackson and Martin.

SA-05 does not connect with the terminals in Clearbrook or Superior.

**SA-06.** SA-06, also suggested by FOH, would follow Minnesota Highway 9 south, until it intersects an existing Magellan products pipeline, approximately 8 to 12-inches in diameter, that it would follow south and east to a point where it intersects with the existing 24-inch MinnCan crude oil pipeline. It would then follow the MinnCan route to the refineries, then continue north along the I-35 corridor in proximity to the 8-inch Magellan products pipeline and Northern Natural Gas Pipeline until it intersects with other Sandpiper route alternatives.

As a part of this proposal it was also suggested that the pipeline route could follow an existing 8-inch Magellan products pipeline east into Wisconsin until it intersects the existing Enbridge right-of-way at which point a pipeline could be built to carry the oil back up to Superior or down to Chicago.

EERA believes that SA-06 partially satisfies the stated project purpose because it does connect back to the terminal in Superior. However, SA-06 does not connect to the Clearbrook terminal. The proposer of this SA-06 does not indicate how it would proceed north from the refinery through the Twin Cities and suburbs.

**SA-07.** SA-07, also suggested by FOH, may be viewed as a combination of two different system alternatives: first, as a combination of SA-07 and SA-06, and the second as a combination of SA-07 and SA-08.

SA-07 and SA-06 when combined to form SA-07 would follow I-29 in North Dakota to Fargo, then follow the same corridor east and southeast adjacent to I-94, then follow an existing Magellan product pipeline south and east to a point where it intersect with the MinnCan 24-inch crude oil pipeline and follow it to Minnesota's two refineries. At those points it is suggested that the pipeline can proceed northward to the Duluth area by following I-35 or the existing Magellan product and Northern Natural Gas pipelines to a point where it intersects with other Sandpiper route alternative and then proceed to the Superior terminal.

The other system alternative would combine SA-07 and SA-08, by following SA-08 (I-94) and extending it through the Twin Cities along the freeway or existing Magellan product pipeline to 1) a point where it intersects I-35 and two other pipelines (Magellan and Northern Natural Gas) that proceed northward as described above, or 2) follow an existing Magellan Product pipeline east into Wisconsin until it intersect the existing Enbridge right-of-way at which point a pipeline could be built to carry the oil back up to Superior or down to Chicago.

Because SA-07 does not connect to a terminal in Clearbrook terminal or provide viable means for locating a pipeline in the Twin Cities, EERA staff recommends that the Commission should not accept SA-07 for further consideration in this proceeding.

**SA-08.** As proposed by Honor the Earth, SA-08 would be located adjacent to or within the right-of-way of I-29 and I-94. Also, SA-08 does not connect to terminals in Clearbrook or Superior.

**Route Alternatives (RA-01 through RA-54)** (See *Sandpiper Alternative Routes Summary Report* Tables 2 through 6 and Figures 2-6)

A route alternative deviates from the applicant's preferred route to address a commenter's concern or issue. Fifty four route alternatives were proposed during the comment period. The alternatives were suggested by the Applicant, agencies and individuals.

Enbridge provided 23 of the 54 route alternatives in order to address individual landowner concerns, agency concerns, engineering constraints or constructability issues. The Minnesota Department of Natural Resources and Minnesota Pollution Control Agency also offered suggestions for routing options, including following Enbridge's mainline corridor that contains up to seven pipelines, the Great Lakes Natural Gas Pipeline, Highway 2 and the Soo Line railroad right-of-way. Some of these routing options vary in length from 30 to 205 miles. Many are shorter options submitted by landowners to address a specific concern related to location on their property.

Specific maps of each route alternative are included in Appendix A of the *Sandpiper Alternative Routes Summary Report*, which is not attached due to size but will be filed separately documents.

## EERA Staff Analysis and Comments

EERA find that all 54 route alternative proposals were submitted within the time frame established by the Commission. In addition, EERA believes that all contain the information required in Minnesota Rule 7852.1400, Subp. 2., in order for the Commission to make a decision as to whether they should be accepted for hearing and analysis in the CEA. EERA finds that they provide options for avoiding and minimizing identified issues associated with the Applicant's proposed route.

However, one landowner offered three route alternatives, RA-31, 34 and 35, to address concerns related to his property. EERA believes that the longest of these, RA-31, need not be carried forward given analysis of the other two route alternatives.

### *System Alternatives*

Because the proposed system alternatives are not alternative routes for meeting the purpose of the project as identified in the permit application, EERA does not believe that these alternatives are appropriate for further consideration. NDPC articulated a similar position in its May 30, 2014, letter regarding route alternatives.<sup>15</sup>

In addition, several system alternatives suggest placing the pipeline adjacent to or within the interstate rights-of-way. Federal Highway Administration and MnDOT right-of-way accommodation policies prohibit longitudinal placement of utility facilities within the fenced area of the Interstate Highway System. Currently a 345 kV High Voltage Transmission Line (HVTL) permitted by the Commission is being built along I-94 between Moorhead and Monticello, Minnesota, limiting the opportunity for further longitudinal placement adjacent to that highway's right-of-way.

However, EERA believes that two proposals, SA-02 and SA-03, might be appropriate for further consideration if connector segments between them and the Clearbrook terminal were developed. (See Attachment 5)

**SA-02 Possible Modification.** EERA staff believes that SA-02, as proposed, partially satisfies the stated project purpose; however, it provides no connection to a terminal in Clearbrook. With the addition of a connector to Clearbrook, SA-02 could provide a "northern option."

One possible modification to SA-02 would be to follow the Sandpiper proposed route to Clearbrook and develop a route segment that would proceed north to join SA-02. Beginning at the terminal in Clearbrook, this route segment would proceed westward paralleling Line 81 or extending northwest from the new Clearbrook terminal to a point where it intersects with Polk County Highway 2, then generally paralleling Polk County Highway 2, Pennington County Highway 27 and Marshall County Highway 28, until it intersects SA-02, then proceeds east and north of the Red Lake Indian Reservation. This route segment modification to SA-02 is approximately 35 miles in length and does not appear to present significant routing constraints at this time.

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<sup>15</sup> See eDockets (13-474) Document ID [20145-99996-01](#)

**SA-03 Possible Modification.** As with SA-02, this system alternative does not provide for a connection with the new Clearbrook terminal.

One possible modification to SA-03 would be to follow the Sandpiper proposed route until it veers east south of Park Rapids. This modified alternative would follow NDPC's proposed route to Clearbrook and from the proposed Clearbrook terminal continue along the proposed route southward paralleling the existing 24-inch MinnCan and 16-inch pipelines in the existing Minnesota Pipeline rights-of-way. However, rather than turning eastward near the city of Hubbard just south of Park Rapids, this route alternative would continue south through the counties of Todd, Wadena and Morrison, paralleling the MinnCan and Minnesota Pipeline rights-of-way to approximately Mile Post 119 on the MinnCan pipeline in Morrison County, where it would intersect with the existing 24-inch Viking Natural Gas Pipeline, and join SA-03 system alternative described above. At the point where the Viking pipeline intersects the 8-inch Magellan products pipeline and the Northern Natural Gas Pipeline, as described above, the route would proceed northward to connect with the Superior terminal.

This route modification is shorter than SA-03 and would parallel a crude oil pipeline system rather than a natural gas pipeline. This could provide for better utilization of existing right-of-way, consolidating crude oil pipelines in one corridor rather than two, and provide for higher concentration of emergency responders, equipment and supply materials when responding to a crude oil pipeline incident.

The MinnCan project received both a certificate of need and route permit from the Commission in 2007 (See Route Permit Docket 05-2003), and was constructed in accordance with the requirements of the Commission issued permit. Other portions of the Minnesota Pipeline system comprised of two 16-inch pipelines and pipeline loops, obtained route permits from the Minnesota Environmental Quality Board when jurisdiction resided with the Board. The record from those previous proceedings may help inform this docket.

Where concerns have been expressed along the proposed Sandpiper route between Clearbrook and Hubbard County, six route alternatives (RA-09, RA-10, RA-11, RA-12, RA-13, and RA-14) have been proposed to mitigate potential project impacts.

Another possible modification of SA-03 would be to follow the Sandpiper proposed route to Clearbrook and then back-track to the Viking Line to join SA-03.

### ***Line 3 Replacement Program***

On March 3, 2014, Enbridge Energy Limited Partnership announced that it received shipper support for the Line 3 Replacement Program (L3R) to replace the existing 34-inch located on its mainline right-of-way, along most of its route from Edmonton, Alberta, to Superior, Wisconsin, with a new 36-inch pipeline and associated facilities.

In Minnesota, Enbridge proposes that Line 3 will be replaced along its existing mainline pipeline route from the North Dakota/Minnesota, border to Clearbrook, Minnesota. This portion of the route will cross the Minnesota counties of Kittson, Marshall, Pennington, Red Lake, Polk and

Clearwater. Between Clearbrook and the Minnesota/Wisconsin border – approximately 225 miles – Enbridge is proposing to locate the L3R pipeline along its preferred route for the Sandpiper Pipeline. Enbridge anticipates filing the Certificate of Need and Pipeline Route Permit applications for the L3R Project with the Commission in April 2015. Consequently, EERA will include evaluation of the right-of-way needed for this pipeline in the CEA for the Sandpiper project.

NDPC in its May 30, 2014, filing (Exhibit D),<sup>16</sup> provided tables showing the potential additive impacts of the preliminary L3R Project route. The section and table numbers correspond to the number in its Minnesota Environmental Information Report filed on January 31, 2014.

## **DOC EERA Staff Recommendation**

Fifty-three of the 54 route alternatives received during the comment period are recommended to be carried forward for analysis in the CEA. EERA believes that they provide options for avoiding and minimizing identified issues associated with the Applicant's proposed route and are appropriate for further consideration. Route alternative RA-31 is not recommended to be carried forward, because the same landowner offered two other route alternatives that addressed similar concerns.

***Wider Analysis Areas*** (See *Sandpiper Alternative Routes Summary Report* Figures 7-11)  
In general, a width of 500 feet is recommended to be used to analyze the proposed and alternate routes in the CEA. In most cases, this width provides ample room for the development of a centerline. However, there are several areas where a wider width would be beneficial to the analysis, due to existing conditions or the presence of multiple route alternatives in close proximity to each other. These areas are listed below. Widths of up to 6,500 feet are recommended for analysis in these areas, except in the Crow Wing Wildlife Management Area as discussed below.

### **Carlton County 1**

Eight route alternatives (RA-42 to RA-49) were suggested in an area surrounding several existing pipelines, Highway 61, and Interstate-35 in Carlton County (Figure 7). A width ranging from 2,500 feet to 6,500 feet would allow for flexibility in using different parts of the route alternatives to develop a route that minimizes impacts.

### **Carlton County 2**

Carlton County 2 is a smaller area adjacent to Carlton County 1 and encompasses three route alternatives (RA-50, 51, and 52) that deviate slightly from the proposed route (Figure 7). A width of 1,500 feet to 2,500 feet would allow for analysis of these alternatives.

### **Aitkin County**

Four route alternatives (RA-33 to RA-36) were suggested in Aitkin County along Highway 65 (Figure 8). A width of 1,500 feet to 4,700 feet would allow for flexibility in comparing the alternatives and developing a route that minimizes impacts.

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<sup>16</sup> See eDockets (13-474) Document ID [20145-99996-02](#), p. 78-97.



### **Spire Valley Aquatic Management area**

The DNR requested that a wider width be analyzed in this area (RA-20) to find routes to avoid and minimize potential impacts to the Spire Valley fish hatchery, due to construction activities (Figure 9). The width recommended for this area is 3,000 feet.

### **Crow Wing Chain Wildlife Management Area (Crow Wing WMA)**

The DNR expressed concerns regarding the crossing of the Crow Wing Chain WMA (RA-16) because of deed restrictions associated with gifted properties from the Nature Conservancy to the State. Enbridge provided a route alternative in late June to avoid the WMA. A width of 9,400 feet is recommended, which would provide flexibility in further developing a route in the area of the WMA (Figure 10).

### **LaSalle Creek**

Two similar route alternatives (RA-09 and 10) were suggested to minimize impacts to Big LaSalle Lake and LaSalle Creek (Figure 11). A 6,500 foot width is recommended to allow for flexibility to avoid impacts to Big LaSalle Lake and LaSalle Creek.

### **Northern Pipelines**

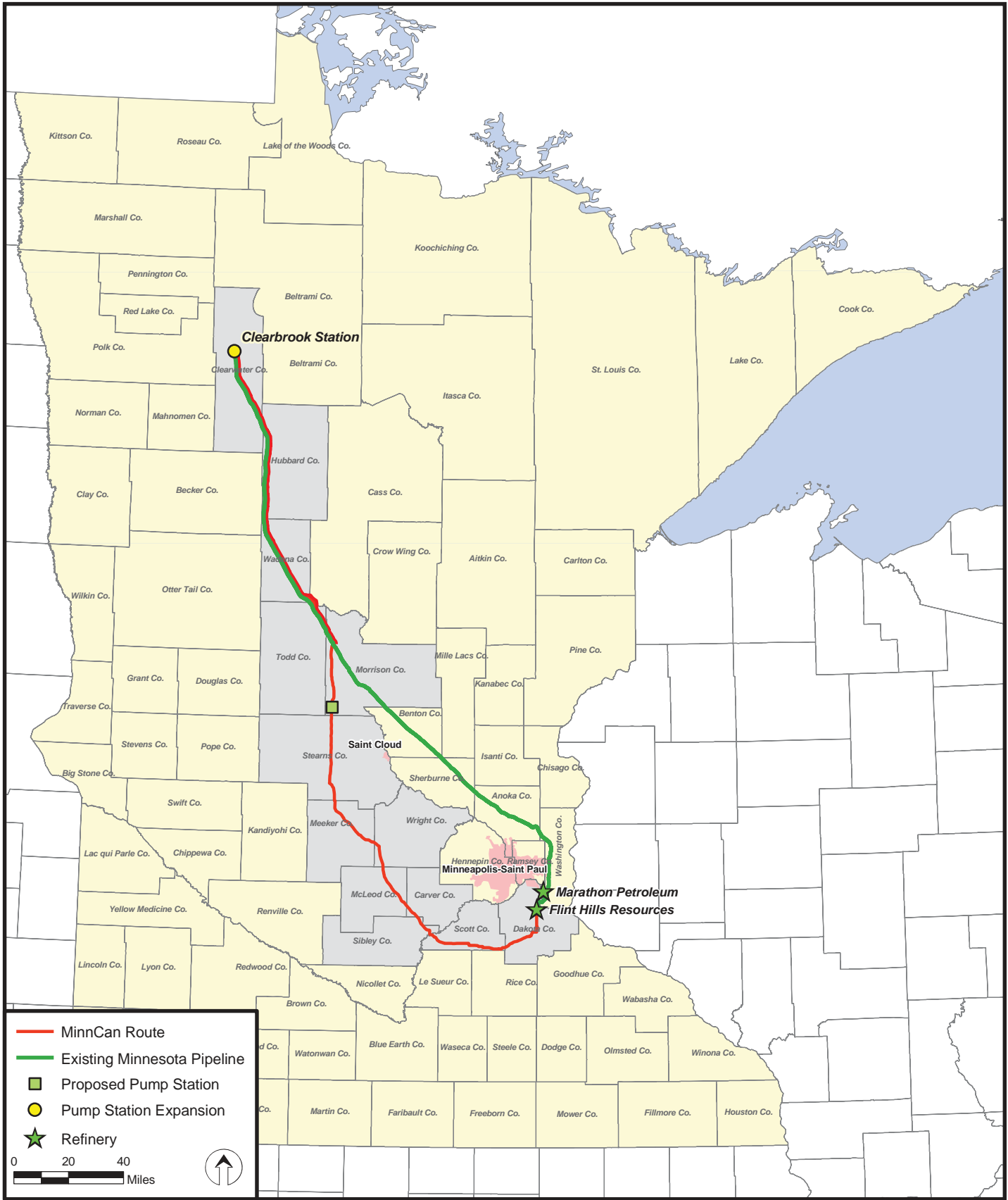
Numerous commenters, including the DNR and PCA, expressed interest in analyzing existing pipeline corridors (Enbridge and Great Lakes) that run generally along Highway 2 from Clearbrook to Superior (RA-7 and 8). A width of 500 feet to 6,500 feet would allow flexibility in following the existing pipelines, railroad, and/or Highway 2 and is based on the proximity of the existing infrastructure to each other.

### ***System Alternatives***

EERA does not believe that any of the eight system alternatives are appropriate for further consideration in the routing docket hearing and CEA analysis because they do not meet the purpose of the project as identified in the permit application and are, therefore, not alternative routes for accomplishing the purpose of the project.

As described above, EERA believes that two system alternatives, SA-02 and SA-03, could be modified to include connections to Clearbrook, thus meeting the purpose of the project. The Commission may want to consider whether these proposals as modified are appropriate for further consideration.





## Minnesota Pipeline Existing Route Map

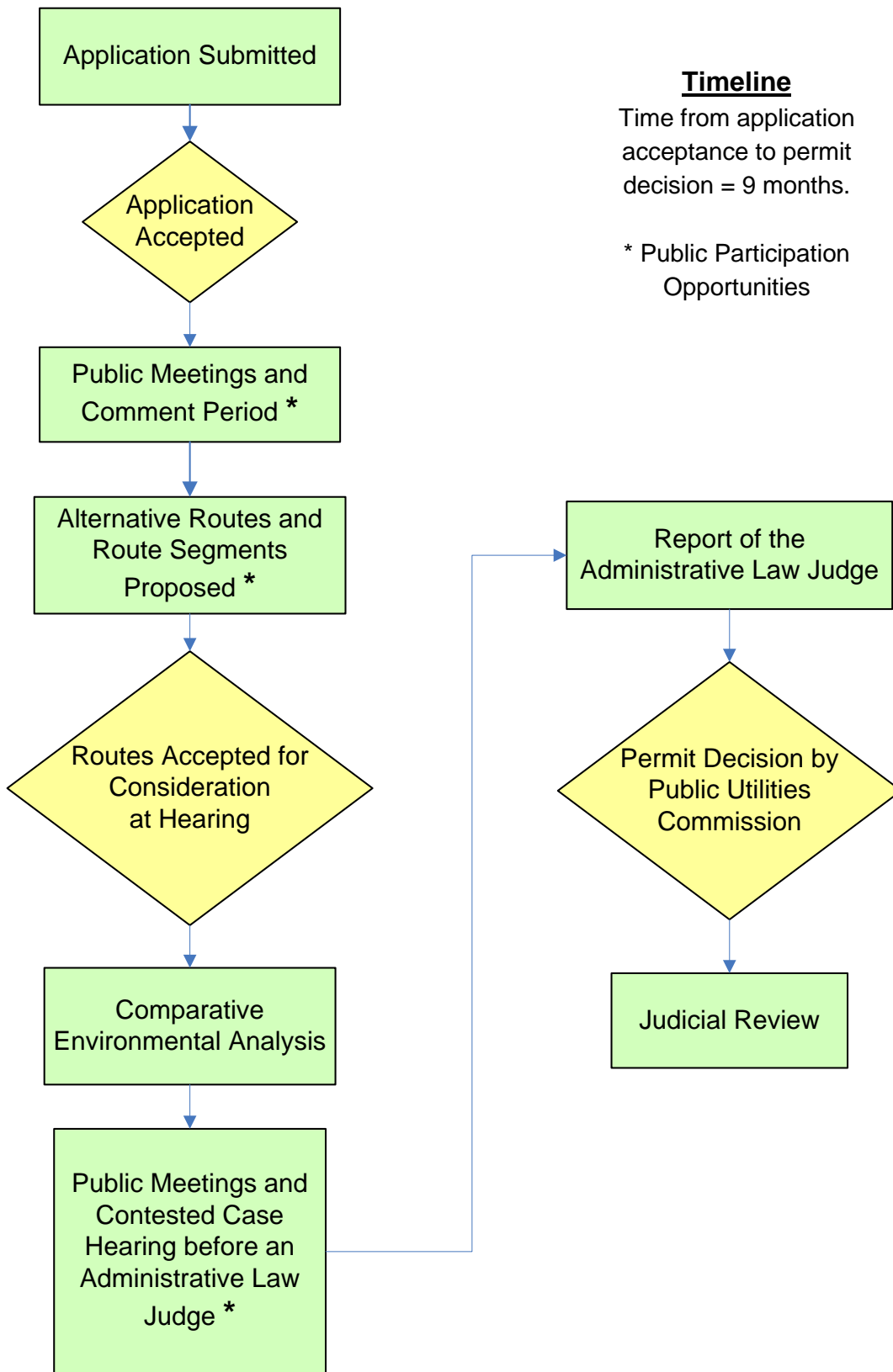
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## Pipeline Routing Full Permitting Process

### Minnesota Rules 7852



#### Timeline

Time from application acceptance to permit decision = 9 months.

\* Public Participation Opportunities

# Sandpiper Alternative Routes Summary Report

In the Matter of the Application of North Dakota Pipeline Company LLC for  
a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota

Docket No. PL-6668/PPL-13-474

July 16, 2014

Prepared by Minnesota Department of Commerce, Energy Environmental Review and Analysis  
staff with assistance from HDR, Inc.



Energy Environmental Review and Analysis  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
ph 651.539.1885 | fx 651.539.0109  
[mn.gov/commerce/energyfacilities](http://mn.gov/commerce/energyfacilities)

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## Summary of System and Route Alternatives

The comment period for identification of route or route segment alternatives to the proposed North Dakota Pipeline Company (Enbridge) Sandpiper pipeline ended May 30, 2014. During the comment period, approximately 1090 comments were received by letter, email and verbal communications recorded by a court reporter at seven public meetings. The written and verbal comments were screened to determine whether commenters had proposed alternatives, yielding a total of 62 proposals. As necessary, commenters were contacted to clarify the location and purpose of their proposals.

The 62 proposals were then sorted into two categories: system alternatives and route alternatives.

This Sandpiper Alternative Routes Summary Report, prepared by the Department of Commerce Energy Environmental Review and Analysis (EERA), is a summary of those system and route alternatives and provides recommendations on routes or route segments for consideration at public hearing and evaluation in the Comparative Environmental Analysis (CEA) pursuant to Minnesota Rule 7852.1400, Route Proposal Acceptance.

### System Alternatives

**A system alternative** is an alternate that proposes a different configuration of pipelines for moving oil from the Williston Basin than the applicant's proposal. It is a wholly separate or independent route from the Applicant's proposed route and is, in essence, a different project than the one proposed by the applicant.

Enbridge is requesting a route permit to transport oil produced in North Dakota to the terminals in Clearbrook, Minnesota, and Superior, Wisconsin. Minnesota Rule 7852.0100, subpart 31, defines a route as "the proposed location of a pipeline between two end points." In this docket, Enbridge has requested a route from the North Dakota border to Clearbrook and from Clearbrook to Superior. Thus, the project, for route permit application purposes, is defined by these three points.

However, eight alternatives proposed during the comment period do not connect with one or more of these three points (Table 1 and Figure 1). The proposed system alternatives include routing the pipeline far north or far south of the applicant's proposed route. None of the system alternatives would connect to the new Clearbrook terminal. Three of the system alternatives do not connect into Enbridge's Superior Terminal.

Because the proposed system alternatives are not alternative routes for meeting the purpose of the project as identified in the permit application, EERA does not believe that these alternatives are appropriate for further consideration.

Two proposals, SA-02 and SA-03, might be appropriate for further consideration if connector segments between them and the Clearbrook terminal were developed.

## System Alternatives

Table 1: Proposed System Alternatives (Figure 1)

Comment Number	System Alternative Number	Commenter	County/State	Comment <sup>1</sup>	Evaluation <sup>2</sup>
50	SA-01	Robert and Karen Lindesmith	N/A	Would like Enbridge to route through Canada	The route does not go through Clearbrook, which provides redundant delivery if a component is out of service, or terminate at Superior.
94	SA-02	Sharon Natzel (Long Lake Area Association )	Northern Minnesota	Commenter route proposal is intended to maximize the protection of the clearest waters of northern Minnesota and the groundwater that are most susceptible. Ronald Vegemast, commenter 156, suggested a very similar route.	The route does not go through Clearbrook, which provides redundant delivery if a component is out of service. Needs connector to Clearbrook. Estimated at 340 miles in length.
182	SA-03	Minnesota Pollution Control Agency	Minnesota	Route would follow the existing 24-inch Viking Natural Gas Pipeline south and southeast to Chisago County, then turn north paralleling existing 8-inch Magellan refined products pipeline and/or a Northern Natural Gas Pipeline to a point where it would interconnect with Sandpiper Alternative Routes in Carlton County, then to terminal in Superior. Calls for new terminal in Crookston area.	The route does not go through Clearbrook, which provides redundant delivery if a component is out of service. Needs connector to Clearbrook. Estimated at 360 miles in length.
116A	SA-04	Friends of the Headwaters	North Dakota, South Eastern Minnesota, Iowa, Illinois	Follows the Alliance Natural Gas Pipeline to parallel an existing pipeline right-of-way; traverses primarily agricultural land and avoids the freshwater lakes.	The route does not go through Clearbrook, which provides redundant delivery if a component is out of service, or terminate at Superior. Estimated at 1050 miles in length.
116B	SA-05	Friends of the Headwaters	North Dakota, South Dakota, Minnesota, Iowa, Illinois	This route is modeled after 116A and parallels the Northern Border Natural Gas Pipeline, traversing primarily agricultural land and avoids crossing the Red River of the North.	The route does not go through Clearbrook, which provides redundant delivery if a component is out of service, or terminate at Superior. Estimated at 1100 miles in length.



Comment Number	System Alternative Number	Commenter	County/State	Comment <sup>1</sup>	Evaluation <sup>2</sup>
116C	SA-06	Friends of the Headwaters	North Dakota, Minnesota	<p>Route would follow Minnesota Highway 9 south, until it intersects existing Magellan 8 to 12-inch product pipeline that it would follow south and east to a point where it crosses the MinnCan pipeline, then follow the MinnCan alignment to the existing Minnesota refineries, then continue north by following I-35 or the Northern Natural Gas and Magellan products pipelines north to a point where the route would intersect with the Sandpiper route alternatives in Carlton County and then continue to the terminal in Superior.</p> <p>Also suggested that pipeline route could follow the 8-inch Magellan products pipeline east into Wisconsin and then follow Enbridge's existing pipeline right-of-way back to Superior or down to the Chicago area.</p>	<p>The route does not go through Clearbrook, which provides redundant delivery if a component is out of service. Needs connector to Clearbrook. Estimated at 390 miles in length.</p>
116D	SA-07	Friends of the Headwaters	North Dakota, Minnesota	<p>SA-07 can be viewed as a combination of two different systems. One is a combination of SA-07 and SA-06, and the other as a combination of SA-07 and SA-08. See Figure 1 System Alternatives.</p> <p>SA-07 and SA-06 when combined to form SA-07, would follow I-29 in North Dakota to Fargo, then follow the same corridor east southeast adjacent to I-94, then follow an existing Magellan product pipeline south and east to a point where it intersects with the MinnCan 24-inch crude oil pipeline to Minnesota's two existing refineries. At those points it is suggested that the pipeline can proceed northward to the Duluth area by following I-35 or the existing Magellan product and Northern Natural gas pipelines to a point when they can interconnect with other alternative Sandpiper routes that continue to the Wisconsin border and terminal in Superior.</p> <p>The other system alternative would combine SA-07 and SA-08, by following SA-08 (I-94) and extending it through the Twin Cities along the freeway or existing Magellan product pipeline to 1) a point where it intersects I-35 and two other pipelines (Magellan and Northern Natural Gas) that proceed northward as described above, or 2) follow an existing Magellan Product pipeline east into Wisconsin until it intersect the existing Enbridge right-of-way at which point a pipeline could be built to carry the oil back up to Superior or down to Chicago.</p>	<p>The route does not go through Clearbrook, which provides redundant delivery if a component is out of service. Needs connector to Clearbrook. Estimated at 395 miles in length.</p>

Comment Number	System Alternative Number	Commenter	County/State	Comment <sup>1</sup>	Evaluation <sup>2</sup>
133	SA-08	Honor the Earth		Wants route to follow I-29 in North Dakota and I-94 in Minnesota.	The route does not go through Clearbrook, which provides redundant delivery if a component is out of service, or terminate at Superior. Estimated at 400 miles in length, if continued on to Superior.

<sup>1</sup> Comment: The comment column is a summary of the issue that was identified in the comment submitted during notice period.

<sup>2</sup> Evaluation: The evaluation column describes why the system alternative will not be further analyzed.

## Route Alternatives

*A route alternative* deviates from the applicant's preferred route to address a commenter's concern or issue. Fifty four route alternatives were proposed during the comment period. The alternatives were suggested by Enbridge, Minnesota Department of Natural Resource (DNR), Minnesota Pollution Control Agency (PCA), and stakeholders. A route alternative was deemed viable if it met the purpose and need of the project and contained no apparent major engineering or environmental issue, based on a visual desktop assessment.

The proposed project is approximately 300 miles long and because of its length the results of the screening effort have been divided into five geographic areas to illustrate locations of the proposed route alternatives (Tables 2 through 6 and Figures 2 through 6):

- North Dakota to Clearbrook
- Clearbrook to Wisconsin
- Clearbrook to Aitkin County
- Aitkin County
- Carlton County

Specific maps of each route alternative are included in Appendix A.

## North Dakota to Clearbrook

The North Dakota to Clearbrook area includes five route alternatives, as shown on Figure 2. A brief summary of the comment regarding the route alternative and the justification for moving forward with the alternative is included in Table 2, below.

**Table 2: North Dakota to Clearbrook**

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-01	Polk	North Dakota to Clearbrook	Co-locating the proposed pipeline with the existing line 81 would reduce habitat fragmentation and there would be fewer cumulative effects	Addresses DNR concerns regarding fragmentation and stream erosion. Impacts new property owners.		186	PC	3.76
RA-02	Polk	North Dakota to Clearbrook	Route alternative requested to move pipeline further away from property owner house, Wants pipeline to be 700 feet away from home instead of 200 feet	The route alternative impacts the same environmental features as he proposed route and new landowners are impacted.	5/30 #1		EPC	1.61
RA-03	Polk	North Dakota to Clearbrook	Route alternative requested to minimize impacts to agricultural research sites. Avoidance of "Field 18" and moving north to drainage ditch in "Field 17" to make sure field 18 can still be used in future research	Addresses University of Minnesota's concern regarding future use of field research plots and does not impact new property owners.	5/30 #2	66	EPC	1.88
RA-04	Polk	North Dakota to Clearbrook	Route alternative to avoid an overhead power line.	Route alternative increases safety during construction. Environmental impacts are the same and no new landowners are impacted.	5/30 #3		ED	0.23
RA-05	Clearwater	North Dakota to Clearbrook	Route alternative requested to accommodate refinement of facility design at the Clearbrook Terminal.	Route alternative impacts the same environmental features as the proposed route and no new landowners are impacted.	5/30 #4		ED	0.33

<sup>1</sup> Comment: The comment column is a summary of the issue that was identified in the comment submitted during notice period.

<sup>2</sup> Justification: The justification column describes why the route alternative is being carried forward for further analysis.

<sup>3</sup> Enbridge Alternative: The Enbridge alternative column tracks routes developed to address commenter concerns by Enbridge according to their letter submittal dates of 4/4 or 5/30.

<sup>4</sup> Comment Source: PC = Public comment submitted route during comment period; EPC = Public comment submitted route during comment period, Enbridge submitted route that addresses the comment; ELO = Enbridge submitted route that addresses an unknown landowner concern; ED = Enbridge submitted route that addresses an engineering design concern

## Clearbrook to Wisconsin

The Clearbrook to Wisconsin includes three route alternatives from Clearbrook to just west of the Wisconsin/Minnesota border following either existing pipelines or going north around several lakes and the Leech Lake Band of Ojibwe Reservation. The route alternatives are shown on Figure 3.

Table 3: Clearbrook to Wisconsin

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-06	Clearwater, Beltrami, Koochiching, Itasca	Clearbrook to Wisconsin	The pipeline should be routed to the north around the lakes area.	Addresses commenters concerns regarding lakes area impacts. Route alternative would impact the Chippewa National Forest (CNF), state forest land and the Dishpan Wildlife Management Area (WMA).		3	PC	205.52
RA-07	Clearwater, Beltrami, Koochiching, Itasca	Clearbrook to Wisconsin	The pipeline should be routed with existing pipelines along highway 2. (Enbridge's mainline)	Addresses commenter's and DNR and PCA concerns regarding lakes area impacts. Route alternative would impact the CNF and the Leech Lake Band of Ojibwe Reservation (LLBO). In addition, the alternative would cross several populated areas.		3	PC	179.82
RA-08	Great Lakes Gas Pipeline	Clearbrook to Wisconsin	The pipeline should be routed with existing Great Lakes pipelines that run generally south of Hwy 2 through Beltrami, Cass, Itasca and St Louis Counties	Addresses DNR concerns regarding lakes area impacts and utilizing existing corridors. Route alternative would impact the CNF, the Leech Lake Band of Ojibwe Reservation (LLBO). In addition, the route would cross several populated areas and is space limited due to other utilities within the corridor.		186	PC	174.22

<sup>1</sup> Comment: The comment column is a summary of the issue that was identified in the comment submitted during notice period.

<sup>2</sup> Justification: The justification column describes why the route alternative is being carried forward for further analysis.

<sup>3</sup> Enbridge Alternative: The Enbridge alternative column tracks routes developed to address commenter concerns by Enbridge according to their letter submittal dates of 4/4 or 5/30.

<sup>4</sup> Comment Source: PC = Public comment submitted route during comment period; EPC = Public comment submitted route during comment period, Enbridge submitted route that addresses the comment; ELO = Enbridge submitted route that addresses an unknown landowner concern; ED = Enbridge submitted route that addresses an engineering design concern

## Clearbrook to Aitkin County

The Clearbrook to Aitkin County area includes 10 route alternatives, as shown on Figure 4. Several of the alternatives were developed to avoid sensitive resources in the Big LaSalle Lake and LaSalle Creek area.

Table 4: Clearbrook to Aitkin County

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-09	Clearwater Hubbard	Clearbrook to Aitkin County	Alternative route starting in Section 11 of Itasca Township in Clearwater County and Hattie Township in Hubbard County to avoid the Big LaSalle Lake area.	Avoids the Big LaSalle Lake area, however, impacts new property owners.		194	PC	8.05
RA-10	Clearwater	Clearbrook to Aitkin County	Big La Salle Creek alternative, lack of access near crossing of LaSalle Creek could result in delayed spill response times, suggest moving route to a crossing that is more accessible	Addresses PCA concern for more accessible crossing, farther away from Big LaSalle Lake. Alternative recommended would impact new property owners.		182	PC	6.83
RA-11	Clearwater	Clearbrook to Aitkin County	Route Alternative proposed to accommodate a landowner request to avoid the lake.	This re-route reduces impacts to lake front property and is further away from Big LaSalle Lake. No new landowners will be impacted.	4/4 #1		ELO	0.90
RA-12	Hubbard	Clearbrook to Aitkin County	Route alternative is being requested to remove a temporary workspace from adjacent land.	Route alternative requested by landowner because it would impact fewer property owners. No new landowners will be impacted.	4/4 #2		ELO	0.34
RA-13	Hubbard	Clearbrook to Aitkin County	Route alternative requested to route through North Dakota Pipeline Company land recently purchased.	Re-route environmental impacts are the same and no new landowners are impacted.	5/30 #5		ED	0.18
RA-14	Hubbard	Clearbrook to Aitkin County	Route alternative being requested because two property owners want the pipeline further away from structures.	Re-route does not involve new landowners; however, it does move the route onto an existing landowner's property. This alternative would avoid taking down two barns.	4/4 #3		ELO	1.57

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-15	Hubbard	Clearbrook to Aitkin County	Twin Lakes route alternative, lack of access near Twin Lakes and Shell river could result in delayed spill response times. Twin Lakes are identified as wild rice lakes by the DNR.	Addresses PCA concern for more accessible crossing. Alternative recommended would impact new property owners and traverse an area of center pivot irrigation. It would also be closer to the town of Hubbard.		182	PC	9.46
RA-16	Hubbard, Wadena	Clearbrook to Aitkin County	Enbridge provided a route to avoid the Crow Wing WMA due to easement restrictions.	Addresses DNR concerns of avoiding the WMA. Alternative would impact new landowners.			ELO	10.46
RA-17	Cass	Clearbrook to Aitkin County	Route Alternative being proposed to avoid a large wetland complex in Foot Hill State Forest.	Route alternative would impact 1 wetland the original route impacts 2. Both the original and alternative are within the Foot Hill State Forest.	4/4 #4		ED	0.41
RA-18	Cass	Clearbrook to Aitkin County	Route alternative requested to accommodate changes to engineering design to add a pipeline inspection gauge launcher and receiver trap.	Route alternative environmental impacts are the same and no new landowners are impacted.	5/30 #6		ED	0.18
RA-19	Cass	Clearbrook to Aitkin County	Route alternative requested that the pipeline be constructed near an existing fence line.	Route alternative impacts more greenfield than the original route and does not affect new landowners.	5/30 #7		ELO	1.11
RA-20	Aitkin	Clearbrook to Aitkin County	DNR requested a wider route south of the Spire Valley Fish Hatchery to minimize impacts the hatchery.	The wider route provides flexibility to address DNR concerns about the fish hatchery.		186	PC	1.25

<sup>1</sup> Comment: The comment column is a summary of the issue that was identified in the comment submitted during notice period.

<sup>2</sup> Justification: The justification column describes why the route alternative is being carried forward for further analysis.

<sup>3</sup> Enbridge Alternative: The Enbridge alternative column tracks routes developed to address commenter concerns by Enbridge according to their letter submittal dates of 4/4 or 5/30.

<sup>4</sup> Comment Source: PC = Public comment submitted route during comment period; EPC = Public comment submitted route during comment period, Enbridge submitted route that addresses the comment; ELO = Enbridge submitted route that addresses an unknown landowner concern; ED = Enbridge submitted route that addresses an engineering design concern

## Aitkin County

The Aitkin County area includes 23 route alternatives, as shown on Figure 5. Several of the route alternatives suggested in this area were landowner requests that the pipeline avoid structures on their property. In addition, a number of the route alternatives suggested to avoid sensitive natural resources.

Table 5: Aitkin County

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-21	Aitkin	Aitkin County	DNR recommended the Aitkin County Power Line as a route alternative to eliminate concerns regarding Sandy River fisheries and wild rice habitat as well as trout stream habitat. This would also avoid 3.1 miles of WMA's and follows existing corridor.	Addresses DNR concerns regarding the fisheries and habitat impacts, however, it does impact new property owners.		186	PC	53.88
RA-22	Aitkin, St Louis, Carlton	Aitkin County	DNR recommended a route alternative that would avoid critical habitat in the Big Sandy lake watershed as well as Grayling Marsh WMA, McGregor WMA, Lawler WMA and Salo Marsh WMA.	Addresses DNR concerns related to resources in the area follows existing corridors, however, impacts new property owners.		186	PC	38.82
RA-23	Aitkin	Aitkin County	The Aitkin County Soo Line Route Alternative was considered in the Enbridge January 31, 2014 Permit Application but removed from further analysis by the company.	The Soo Line Route Alternative removed from further analysis by Enbridge is being carried forward into the route analysis because it was recommended by several landowners throughout the comment period and it would parallel the existing ATV trail.			PC	31.13
RA-24	Aitkin	Aitkin County	Commenter proposing route alternative to minimize forest fragmentation and avoid old growth forests in the Hill River State Park	Route impacts less greenfield. The applicant proposed route and the suggested route alternative are both located in the Hill River State Park.	4/4 #6	186	EPC	1.65
RA-25	Aitkin	Aitkin County	Commenter would like the route to move to the east across wetland (former rice paddy areas) to preserve all high land for future building plans.	Addresses landowner concern. Alternative recommended would not impact new property owners.	5/30 #8	229	EPC	0.61
RA-26	Aitkin	Aitkin County	Commenter would prefer route alternative that would veer south and southeast from the intersection of US Highway 169 and CSAH 3 west of Palisade.	Route alternative impacts state forest land and new landowners.	4/4 #7	262	EPC	3.41
RA-27	Aitkin, Carlton	Aitkin County	DNR is recommending that the analysis includes the Soo line to avoid the McGregor SNA and the Sandy River watershed	Addresses DNR concerns related to the McGregor SNA and the Sandy River Watershed.		186	PC	13.23



Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-28	Aitkin	Aitkin County	Commenter suggested a route alternative that turns south in Aitkin County and meets back with the proposed route to the east.	There was a map submitted during the comment period without a written comment attached. Based on the aerial image the proposed route was suggested to avoid gravel pits.		757	PC	3.50
RA-29	Aitkin	Aitkin County	Commenter suggested a route alternative suggested accommodating landowner request related to future home sites along the road.	Route alternative would impact more greenfield and wetland. There would be no new landowner impacts.	4/4 #8		ELO	0.66
RA-30	Aitkin	Aitkin County	Route alternative requested to avoid bending the pipeline in the road ditch which could impact the integrity of the roadway.	Route alternative environmental impacts would be the same and no new landowners are impacted.	5/30 #9		ELO	0.07
RA-31	Aitkin	Aitkin County	Commenter requested a route alternative to cut straight and diagonally across several miles in Aitkin County.	Addresses commenter concern regarding distance from home. Alternative recommended would impact new property owners.		2.3	PC	6.12
RA-32	Aitkin	Aitkin County	Commenter is requesting that the pipeline be located on Aitkin County Tax forfeit land which avoids an Old Growth Forest.	Addresses commenter concerns which would avoid the old growth forest would put route alternative on tax forfeit land.		75	PC	0.45
RA-33	Aitkin	Aitkin County	Commenter would like the pipeline moved east to the back edge of his property where it joins with the Peat Plant.	Addresses commenter concern and would impact new property owners.		89	PC	1.80
RA-34	Aitkin	Aitkin County	Commenter suggesting shifting the pipeline north into the tree line.	Addresses commenter concern regarding distance from home. Alternative recommended would impact new property owners.		2.1	PC	2.22
RA-35	Aitkin	Aitkin County	Commenter suggesting route alternative that would cut south on township road 270th and traverse east until it meets with the proposed route.	Addresses commenter concern regarding distance from home. Alternative route would impact new property owners and potentially impact a peat farm.		2.2	PC	1.72
RA-36	Carlton	Aitkin County	Commenter suggesting a route alternative to shift the pipeline to the north into tree line.	Route alternative addresses concern with other environmental impacts the same as the proposed route; no new landowners are impacted.	5/30 #10		ELO	0.38

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-37	Aitkin, Carlton	Aitkin County	Commenter suggesting Route Alternative that would parallel Hwy 210 after mile marker 550 then turn south to reconnect with the proposed route south of Cloquet.	The recommended route alternative would follow existing corridor, avoiding the Salo Marsh and Lawler WMA.		756.1	PC	38.68
RA-38	Aitkin, Carlton	Aitkin County	Commenter suggested a Route Alternative to avoid the Salo Marsh WMA.	Route alternative avoids the Salo Marsh WMA and does not impact new property owners.	5/30 #11		ELO	6.73

<sup>1</sup> Comment: The comment column is a summary of the issue that was identified in the comment submitted during notice period.

<sup>2</sup> Justification: The justification column describes why the route alternative is being carried forward for further analysis.

<sup>3</sup> Enbridge Alternative: The Enbridge alternative column tracks routes developed to address commenter concerns by Enbridge according to their letter submittal dates of 4/4 or 5/30.

<sup>4</sup> Comment Source: PC = Public comment submitted route during comment period; EPC = Public comment submitted route during comment period, Enbridge submitted route that addresses the comment; ELO = Enbridge submitted route that addresses an unknown landowner concern; ED = Enbridge submitted route that addresses an engineering design concern

## Carlton County

The Carlton County area includes thirteen route alternatives, as shown on Figure 6. Many of the route alternatives from landowners request that the pipeline avoid structures on their property.

**Table 6: Carlton County**

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-39	Carlton and Aitkin	Aitkin County	Commenter would prefer route alternative that veers south of proposed route near Salo Marsh WMA Impoundment to avoid mineral development land.	Addresses commenter concern. Alternative recommended would impact new property owners, the Salo Marsh, and State Forest Land.		183	PC	9.01
RA-40	Carlton	Carlton County	Commenter suggested a route to use county land to the north of property owners land.	Addresses commenter concern regarding distance from home. Alternative recommended would not impact new property owners.		756.2	PC	1.04
RA-41	Carlton	Carlton County	Commenter suggested shifting the pipeline south to avoid a beaver dam.	Addresses commenter concern regarding the impacts to the beaver dam. Alternative recommended would not impact new property owners.	4/4 #9		ELO	0.61
RA-42	Carlton	Carlton County	Commenter requesting to co-locate pipeline with an existing power line corridor.	Addresses commenter concern. Alternative recommended would impact new property owners.		152	PC	3.48
RA-43	Carlton	Carlton County	Commenter suggesting to move pipeline to north side of Hwy 61, co-locating it with a utility corridor.	Addresses commenter concerns regarding continuity of utility corridors. Alternative recommended would impact new property owners.		34	PC	3.08
RA-44	Carlton	Carlton County	Commenter suggested following and existing utility corridor on the north side of Highway 61 to avoid the Blackhoof watershed.	Addresses commenter concern regarding groundwater flow around the watershed. Alternative recommended would impact new property owners.		97	PC	7.66
RA-45	Carlton	Carlton County	Commenter suggested following south side of Highway 61 to avoid the Blackhoof Watershed	Addresses commenter concern regarding ground water flow around the watershed. Alternative recommended would impact new property owners.		97	PC	7.13

Route Alternative Number	County	Project Section	Comment <sup>1</sup>	Justification <sup>2</sup>	Enbridge Alt <sup>3</sup>	Comment Database Number	Comment Source <sup>4</sup>	Length (miles)
RA-46	Carlton	Carlton County	Commenter suggested shifting the pipeline to the south, running parallel to County Road 61.	Addresses commenter concern. Alternative recommended would impact new property owners.		121	PC	1.91
RA-47	Carlton	Carlton County	Route alternative requested moving the pipeline south to avoid a grove of trees.	Addresses commenter concern regarding distance from the trees. Alternative would not impact new property owners.	4/4 #10		ELO	0.85
RA-48	Carlton	Carlton County	Commenter suggested shifting the pipeline to the other side of I-35 to avoid cutting off access road.	Addresses commenter concerns regarding road access. Alternative recommended would impact new property owners.		68	PC	1.28
RA-49	Carlton	Carlton County	Commenter requested to follow the south sides of I-35 and Highway 61 to distance pipeline from multiple properties.	Addresses commenter concern. Alternative recommended would impact new property owners.		162	PC	5.96
RA-50	Carlton	Carlton County	Commenter requested to reduce the number of Blackhoof River crossings.	Addressed commenter concern reducing river crossings down from 4 to 1. Increases wetland and greenfield impacts. Alternative would not impact new landowners	4/4 #11		PC	0.56
RA-51	Aitkin	Carlton County	Commenter proposed shifting the pipeline north to follow the tree line and distance it from homesteads.	Addresses commenter concern regarding distance from home. Alternative recommended would impact new property owners.		1	PC	1.41
RA-52	Aitkin	Carlton County	Commenter proposed shifting the pipeline north to follow the tree line and distance it from homesteads.	Addresses landowner concern regarding distance from home. Alternative would impact new property owners.		1	PC	0.84
RA-53	Carlton	Carlton County	Enbridge requested route alternative to avoid multiple crossings of an overhead power line.	Addresses crossing concerns and reduces the number of property owners impacted. Also, has about the same environmental impacts as the original route.	4/4 #12		ED	0.20
RA-54	Carlton	Carlton County	Commenter suggested locating the pipeline closer to an existing natural gas line.	Addresses commenter concerns regarding co-locating the pipeline. Reduces impacts to greenfield; no new property owners impacted.	4/4 #13		ELO	0.31

<sup>1</sup> Comment: The comment column is a summary of the issue that was identified in the comment submitted during notice period.

<sup>2</sup> Justification: The justification column describes why the route alternative is being carried forward for further analysis.

<sup>3</sup> Enbridge Alternative: The Enbridge alternative column tracks routes developed to address commenter concerns by Enbridge according to their letter submittal dates of 4/4 or 5/30.

<sup>4</sup> Comment Source: PC = Public comment submitted route during comment period; EPC = Public comment submitted route during comment period, Enbridge submitted route that addresses the comment; ELO = Enbridge submitted route that addresses an unknown landowner concern; ED = Enbridge submitted route that addresses an engineering design concern

## Recommended Route Alternatives

Fifty-four route alternatives were proposed by Enbridge, agencies and stakeholders. Fifty-three of the 54 route alternatives are recommended to be carried forward for analysis in the CEA. Route alternative RA-31 is not recommended to be carried forward, because the same landowner offered two other route alternatives that addressed similar concerns.

In general, a width of 500 feet is recommended to be used to analyze the proposed and alternate routes in the CEA. In most cases, this width provides ample room for the development of a centerline. However, there are several areas where a wider width would be beneficial to the analysis, due to existing conditions or the presence of multiple route alternatives in close proximity to each other. These areas are listed below. Widths of up to 6,500 feet are recommended for analysis in these areas.

### Wider Analysis Areas

#### CARLTON COUNTY 1

Eight route alternatives (RA-42 to RA-49) were suggested in an area surrounding several existing pipelines, Highway 61, and Interstate-35 in Carlton County (Figure 7). A width ranging from 2,500 feet to 6,500 feet would allow for flexibility in using different parts of the route alternatives to develop a route that minimizes impacts.

#### CARLTON COUNTY 2

Carlton County 2 is a smaller area adjacent to Carlton County 1 and encompasses three route alternatives (RA-50, 51, and 52) that deviate slightly from the proposed route (Figure 7). A width of 1,500 feet to 2,500 feet would allow for analysis of these alternatives.

#### AITKIN COUNTY

Four route alternatives (RA-33 to RA-36) were suggested in Aitkin County along Highway 65 (Figure 8). A width of 1,500 feet to 4,700 feet would allow for flexibility in comparing the alternatives and developing a route that minimizes impacts.

#### SPIRE VALLEY AQUATIC MANAGEMENT AREA

The DNR requested that a wider route alternative width be analyzed in this area (RA-20) to minimize potential impacts to the Spire Valley fish hatchery, due to construction activities (Figure 9). The width recommended for this area is 3,000 feet.

#### CROW WING CHAIN WILDLIFE MANAGEMENT AREA (CROW WING WMA)

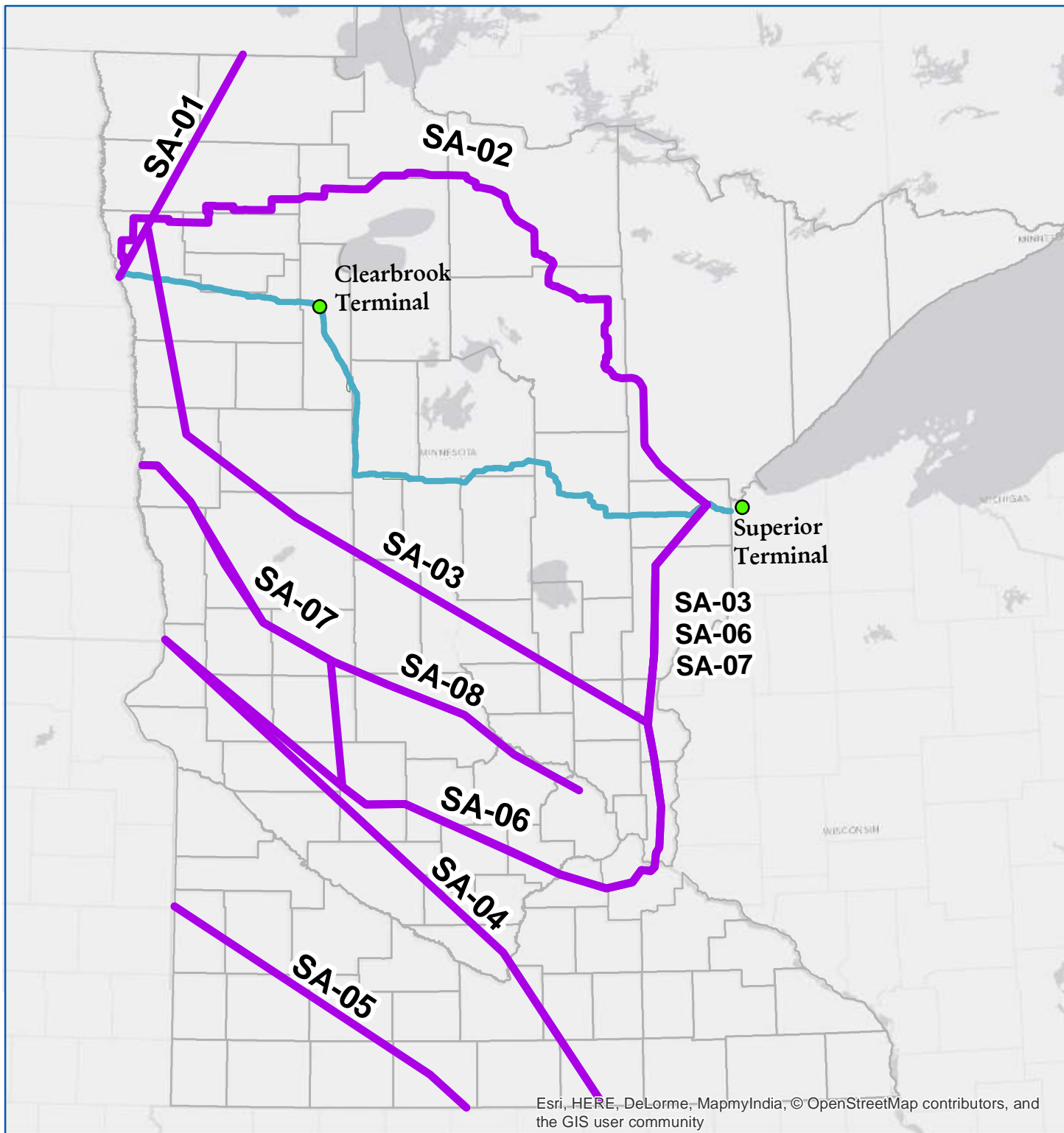
The DNR expressed concerns regarding the crossing of the Crow Wing Chain WMA (RA-16) because of deed restrictions associated with gifted properties from the Nature Conservancy to the State. Enbridge provided a route alternative in late June to avoid the WMA. A width of 9,400 feet is recommended, which would provide flexibility in further developing a route in the area of the WMA (Figure 10).

#### LASALLE CREEK

Two similar route alternatives (RA-09 and 10) were suggested to minimize impacts to Big LaSalle Lake and LaSalle Creek (Figure 11). A 6,500 foot width is recommended to allow for flexibility to avoid impacts to Big LaSalle Lake and LaSalle Creek.

#### **NORTHERN PIPELINES**

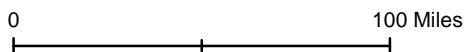
Numerous commenters, including the DNR and PCA, expressed interest in analyzing existing pipeline corridors (Enbridge and Great Lakes) that run generally along Highway 2 from Clearbrook to Superior (RA-7 and 8). A width of 500 feet to 6,500 feet would allow flexibility in following the existing pipelines, railroad, and/or Highway 2 and is based on the proximity of the existing infrastructure to each other.



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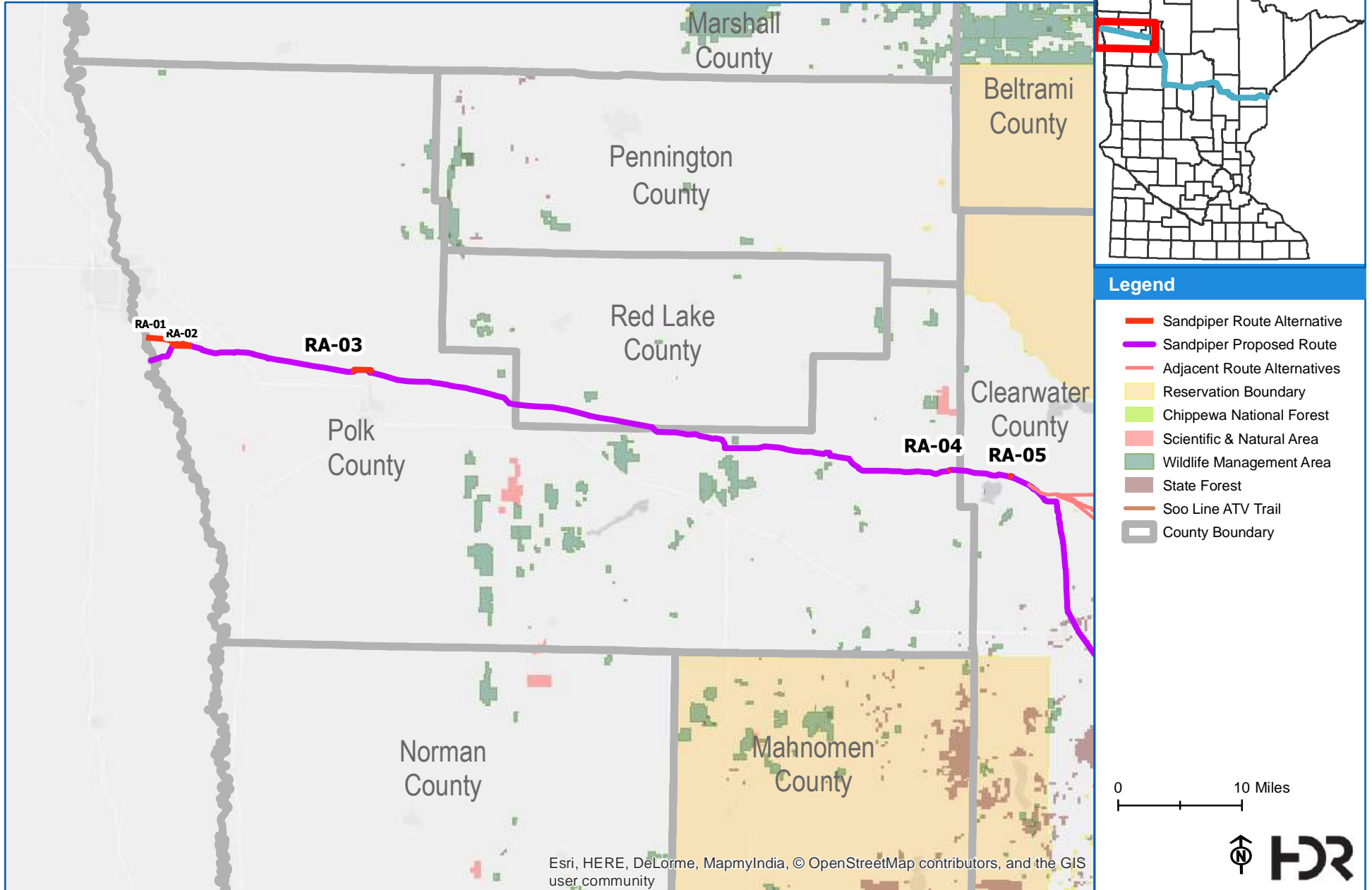
**Legend**

- System Alternative
- System Alternative Connector
- Sandpiper Proposed Route
- County Boundary

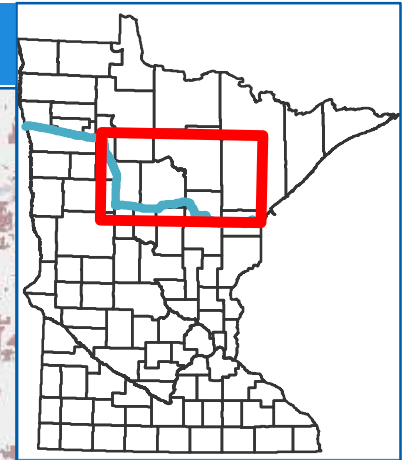
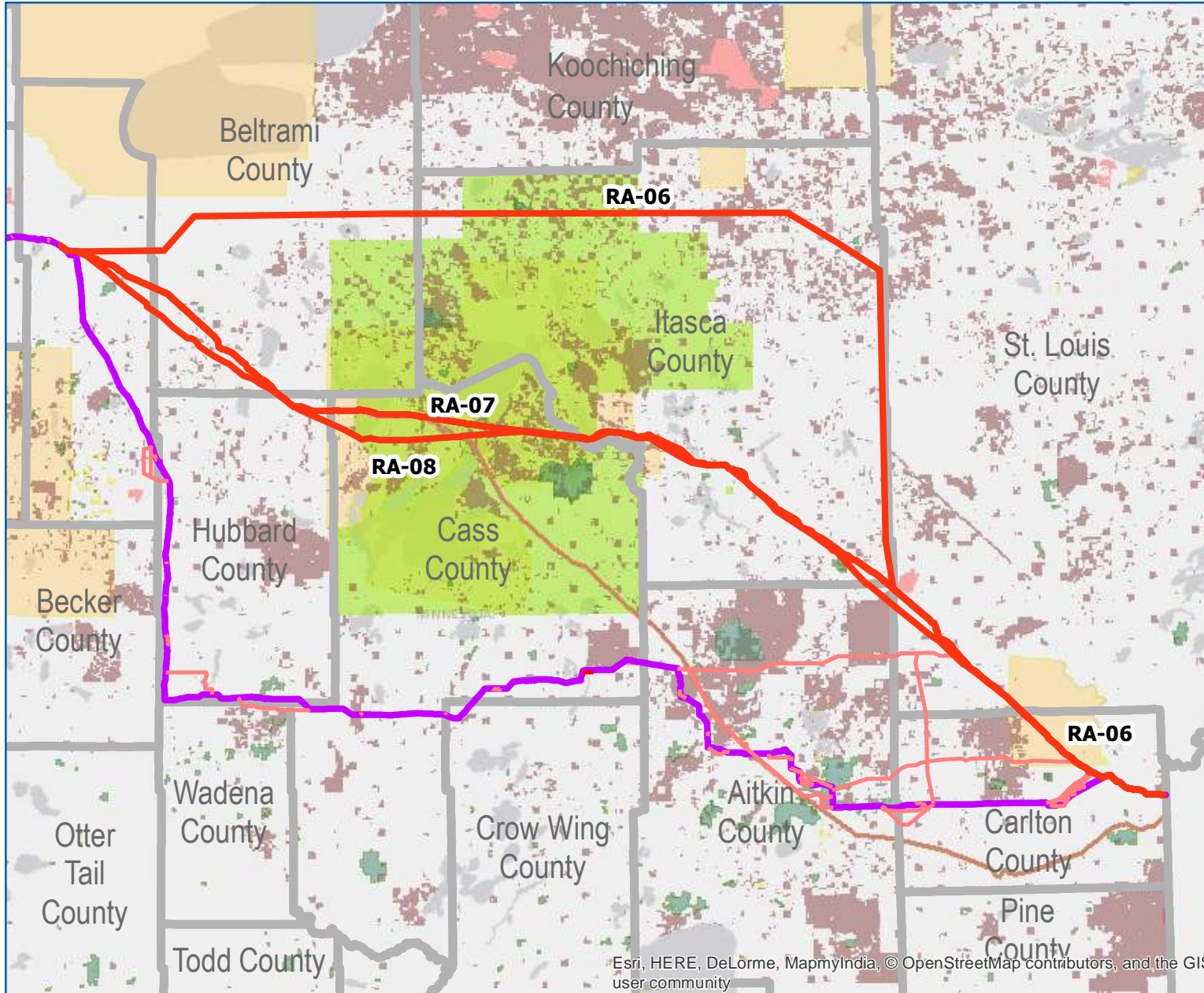




**Figure 2 North Dakota to Clearbrook  
Sandpiper Route Alternatives**



**Figure 3 Clearbrook to Wisconsin  
Sandpiper Route Alternatives**



**Legend**

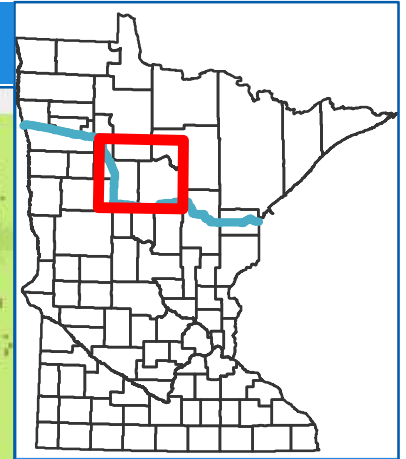
- Sandpiper Route Alternative
- Sandpiper Proposed Route
- Adjacent Route Alternatives
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- Soo Line ATV Trail
- County Boundary

0 25 Miles












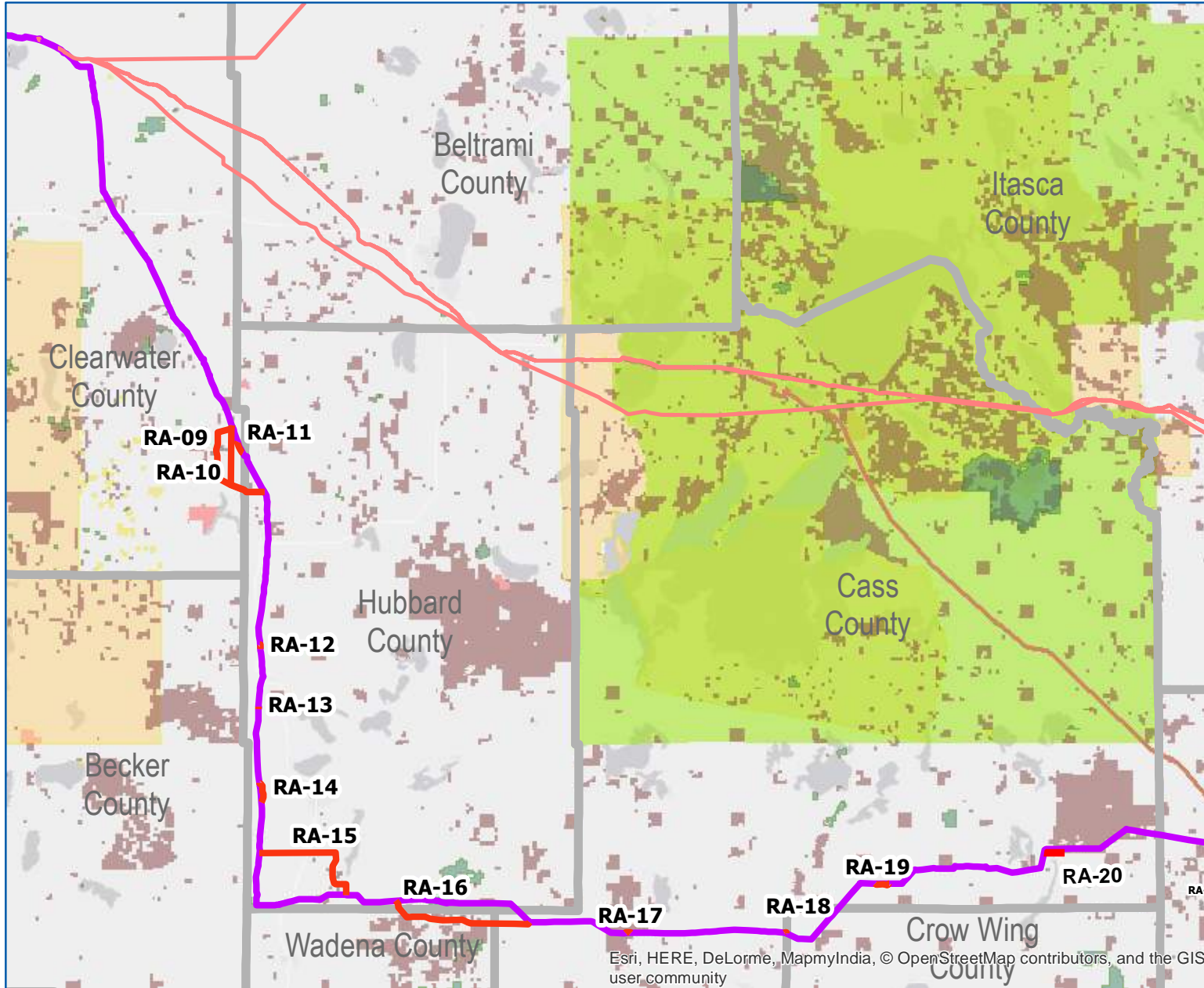
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**Figure 4 Clearbrook to Aitkin County  
Sandpiper Route Alternatives**



**Legend**

-  Sandpiper Route Alternative
-  Sandpiper Proposed Route
-  Adjacent Route Alternatives
-  Reservation Boundary
-  Chippewa National Forest
-  Scientific & Natural Area
-  Wildlife Management Area
-  State Forest
-  Soo Line ATV Trail
-  County Boundary

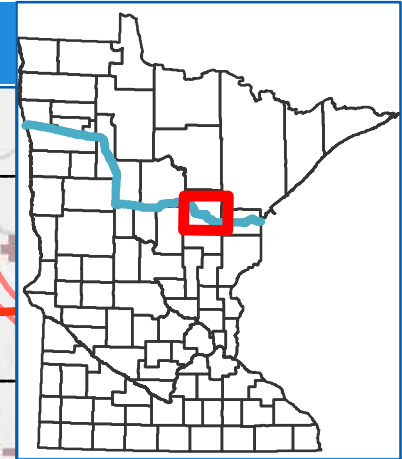
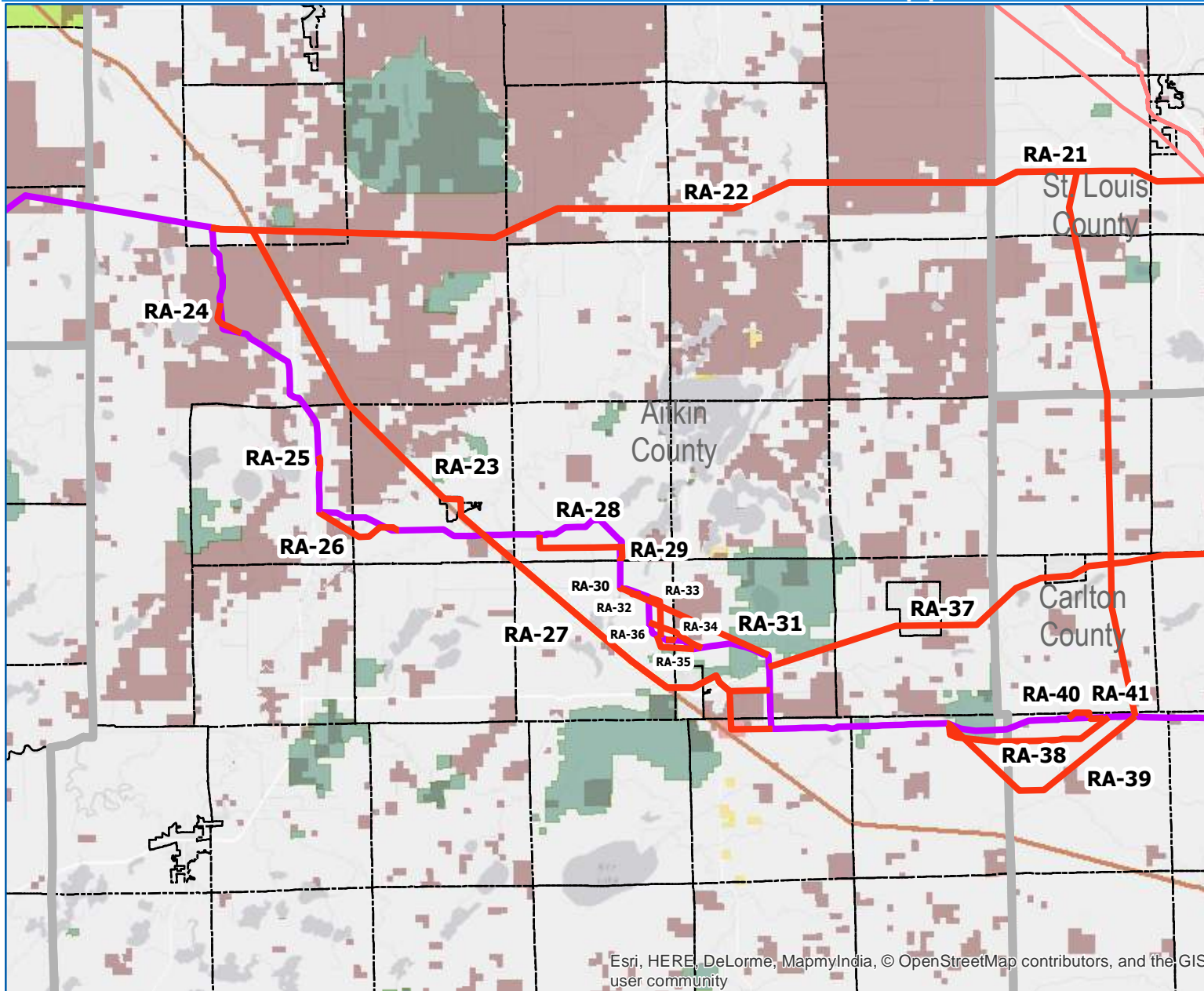


0 10 Miles



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**Figure 5 Aitkin County  
Sandpiper Route Alternatives**



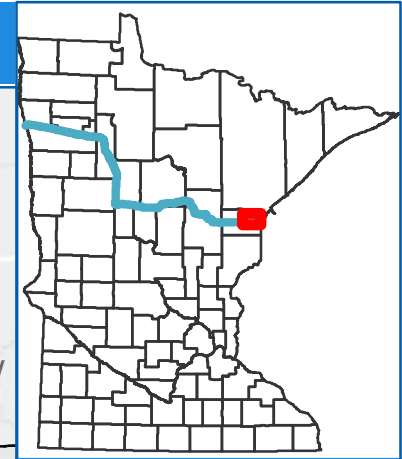
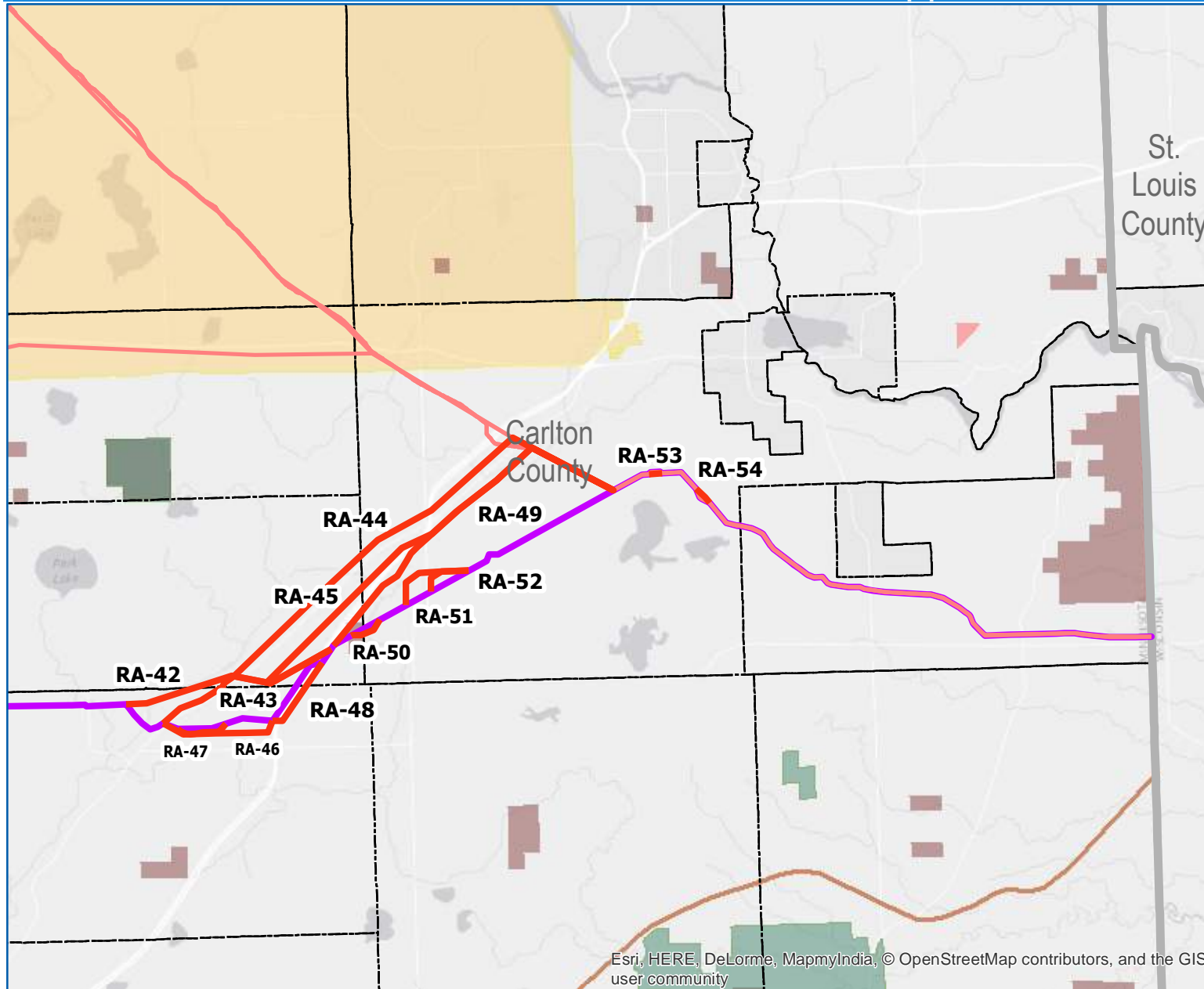
**Legend**

- Sandpiper Route Alternative
- Sandpiper Proposed Route
- Adjacent Route Alternatives
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- Soo Line ATV Trail
- County Boundary
- City / Township Boundary

0 8 Miles



**Figure 6 Carlton County  
Sandpiper Route Alternatives**



**Legend**

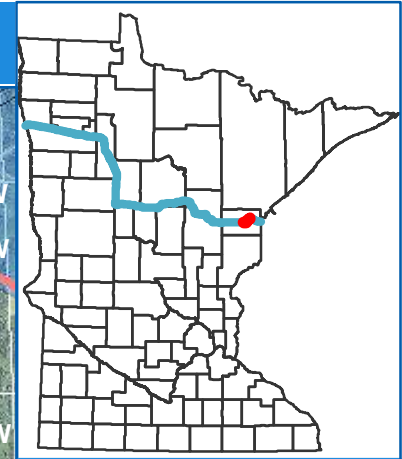
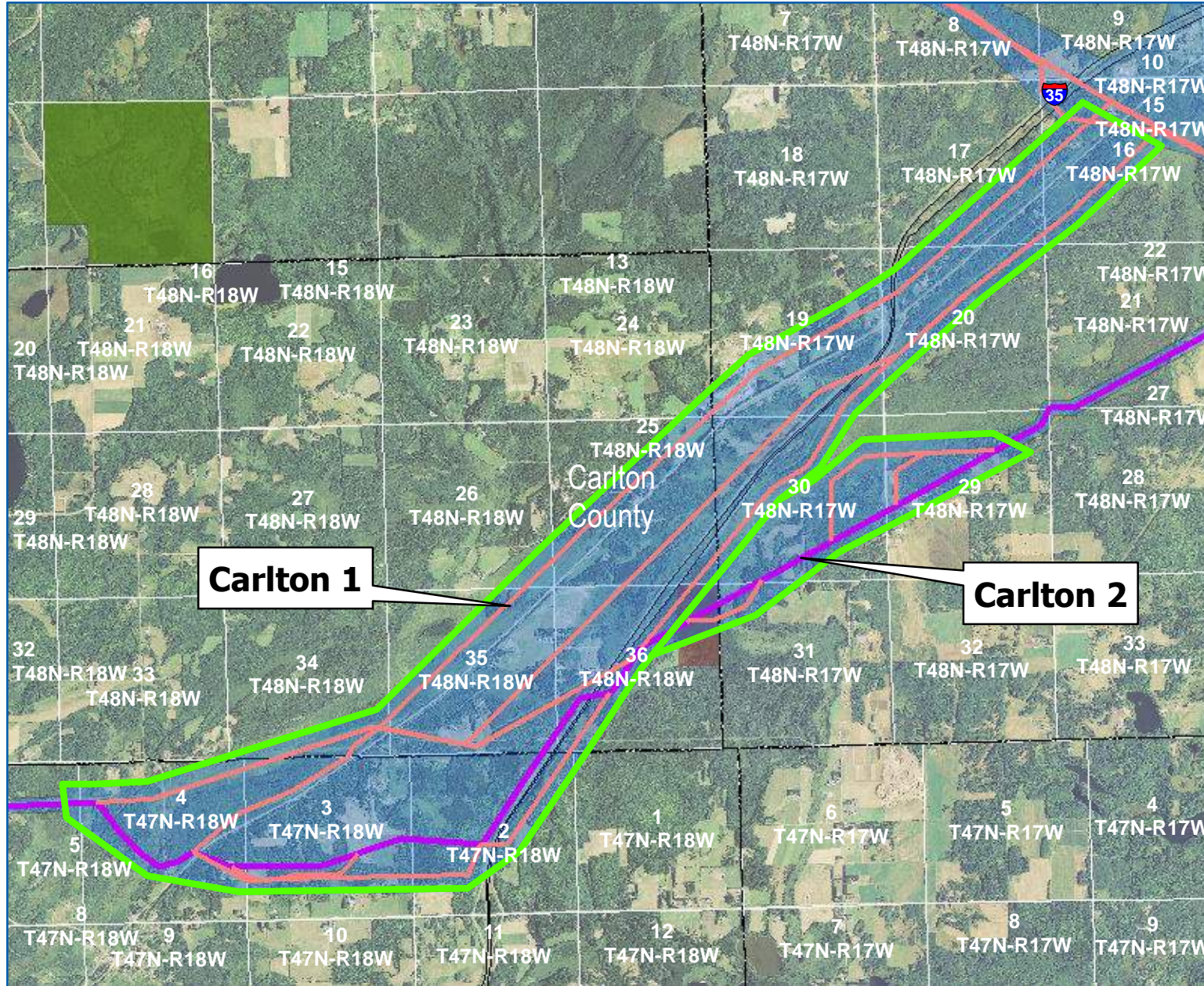
- Sandpiper Route Alternative
- Sandpiper Proposed Route
- Adjacent Route Alternatives
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- Soo Line ATV Trail
- County Boundary
- City / Township Boundary

0 3 Miles



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**Figure 7 Carlton 1 and 2  
Sandpiper Wider Route Areas**



**Legend**

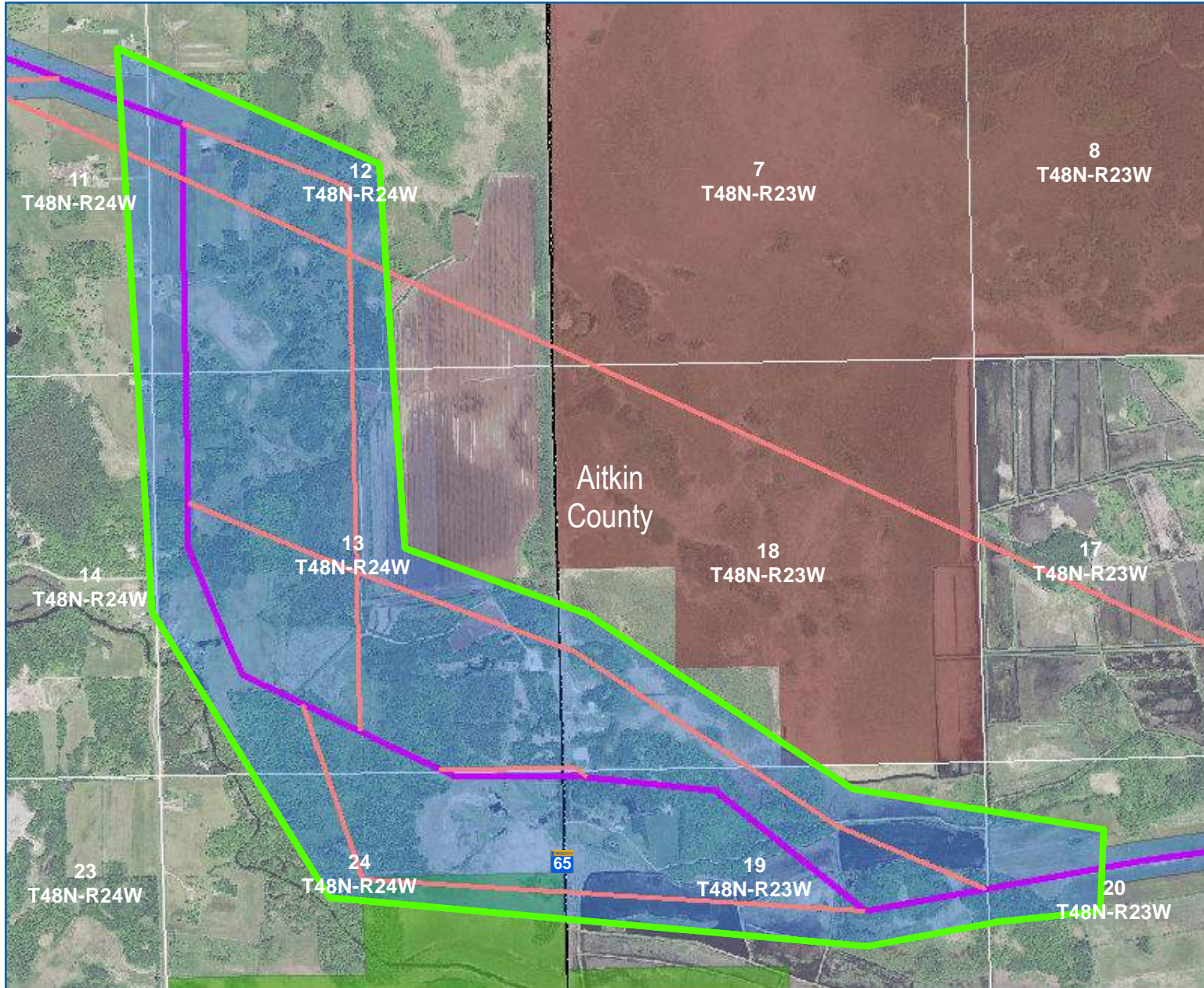
- Sandpiper Proposed Route
- Route Alternatives
- Areas where route is wider
- Route Alternative Width
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- County Boundary
- City / Township Boundary

<b>Carlton 1</b>	<b>Carlton 2</b>
RA-42	RA-50
RA-43	RA-51
RA-44	RA-52
RA-45	
RA-46	
RA-47	
RA-48	
RA-49	

0 1 Miles



**Figure 8 Aitkin County  
Sandpiper Wider Route Areas**



**Legend**

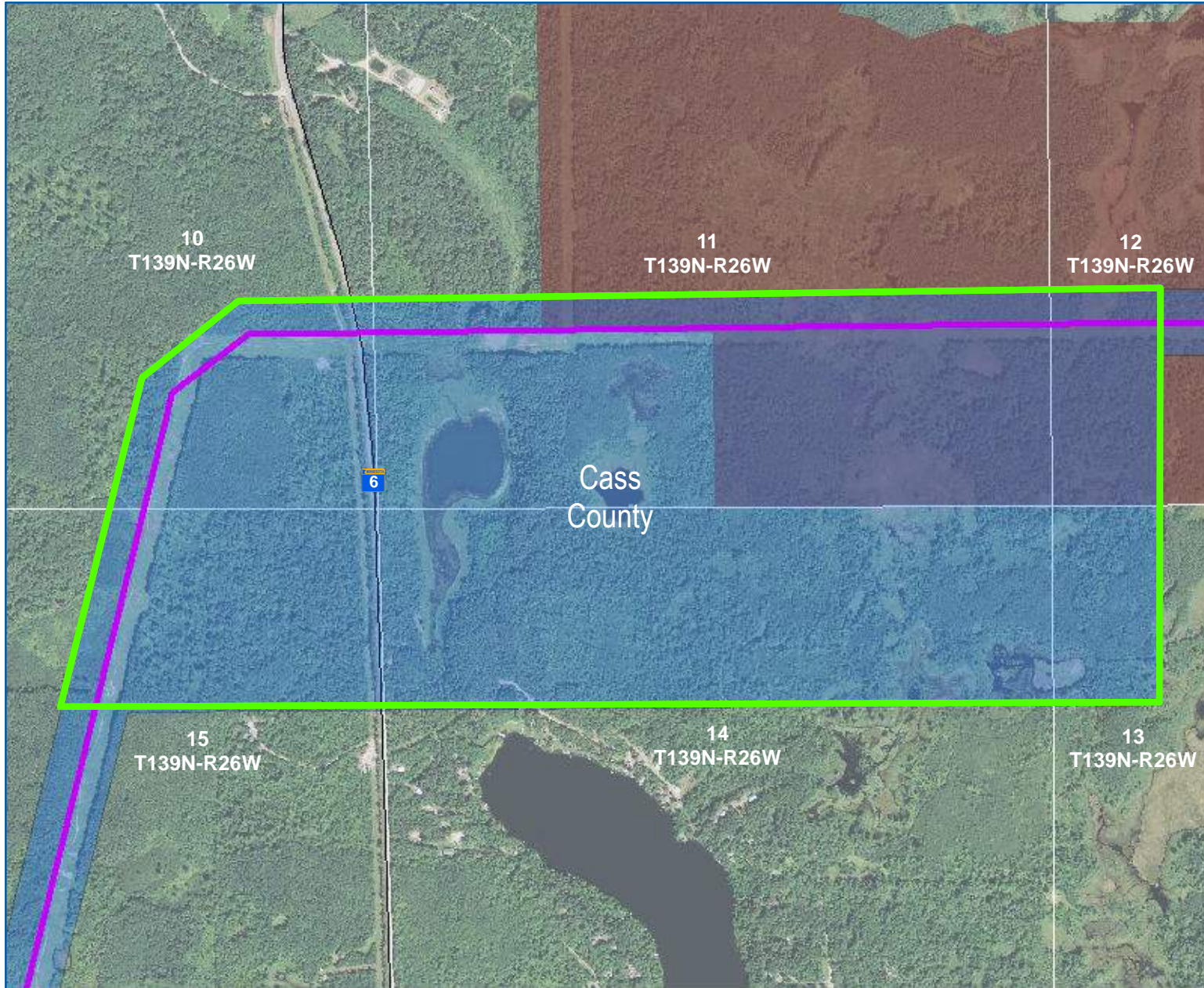
- Sandpiper Proposed Route
- Route Alternatives
- Areas where route is wider
- Route Alternative Width
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- County Boundary
- City / Township Boundary

**Aitken County**

- RA-33
- RA-34
- RA-35
- RA-36



**Figure 9 Spire Valley AMA  
Sandpiper Wider Route Areas**



**Legend**

- Sandpiper Proposed Route
- Route Alternatives
- Areas where route is wider
- Route Alternative Width
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- County Boundary
- City / Township Boundary

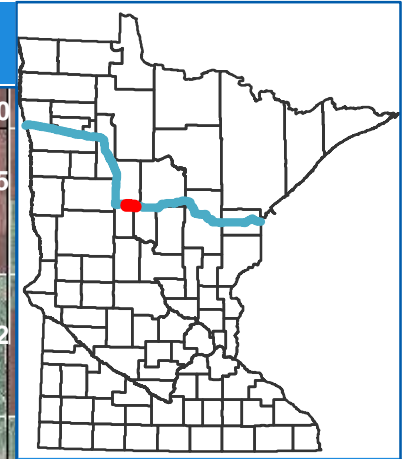
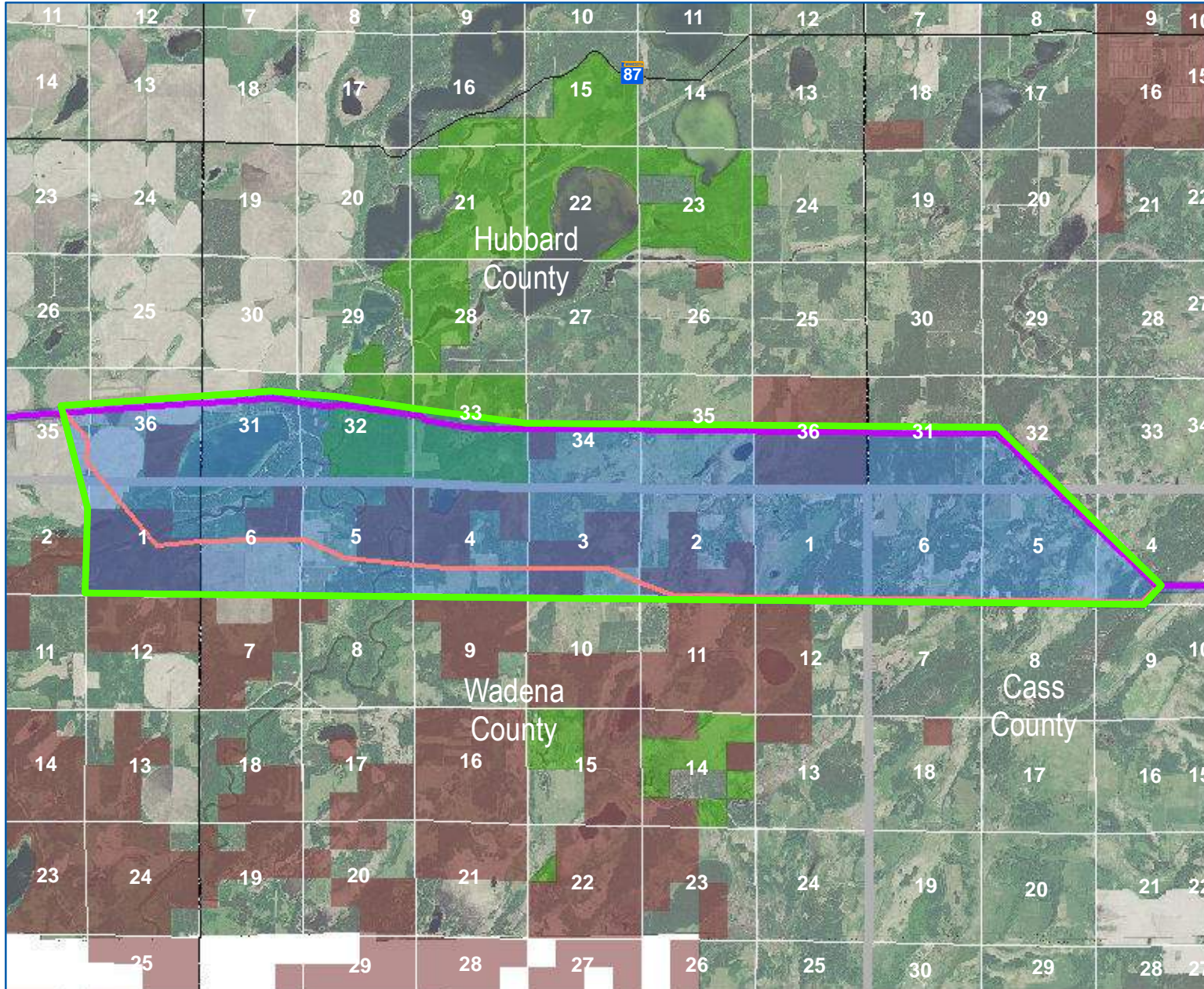
**Spire Valley AMA**  
RA-20

0 0.3 Miles





**Figure 10 Crow Wing Chain WMA  
Sandpiper Wider Route Areas**



**Legend**

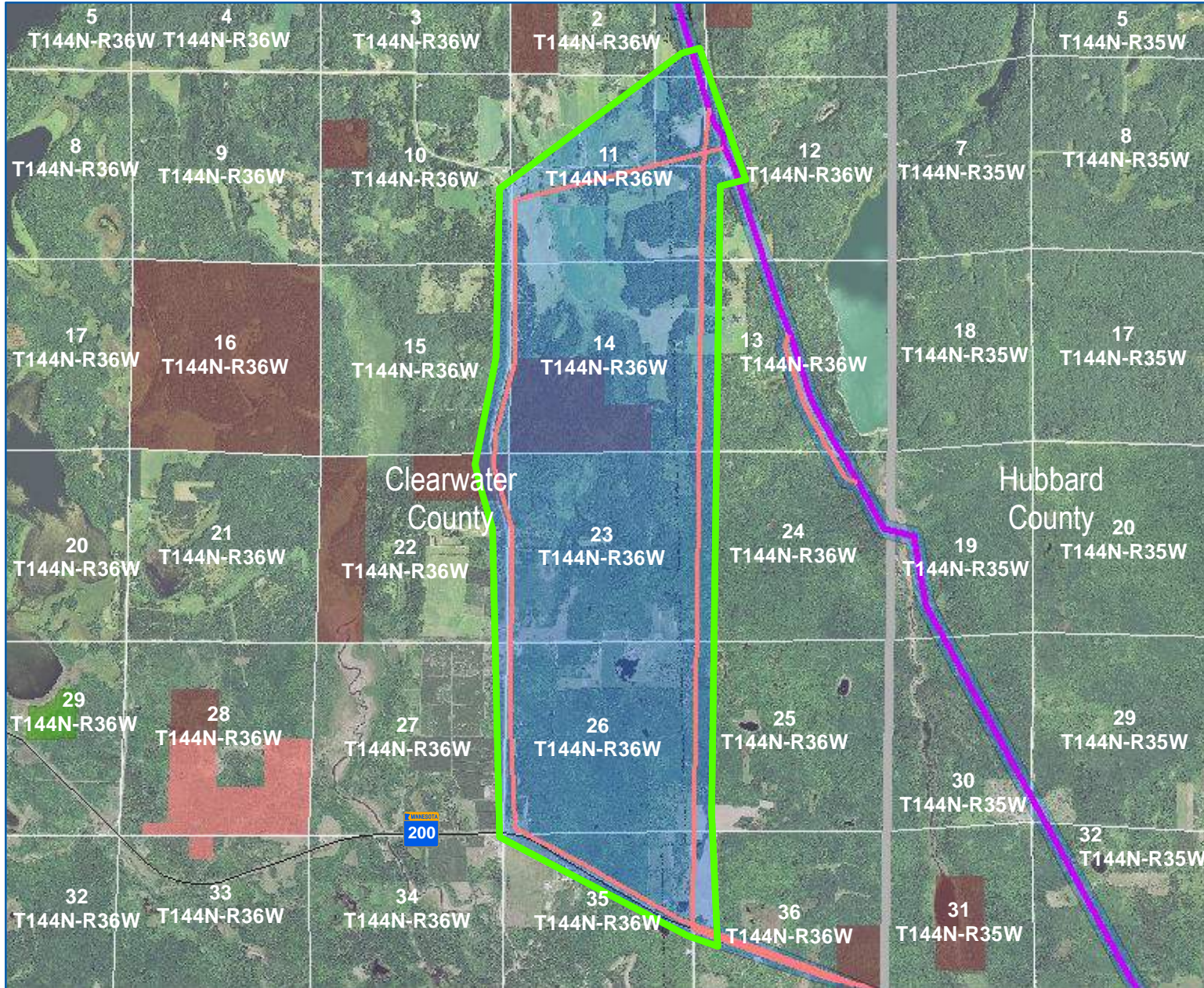
- Sandpiper Proposed Route
- Route Alternatives
- Areas where route is wider
- Route Alternative Width
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- County Boundary
- City / Township Boundary

**Crow Wing Chain WMA**

RA-16



**Figure 11 LaSalle Creek  
Sandpiper Wider Route Areas**



**Legend**

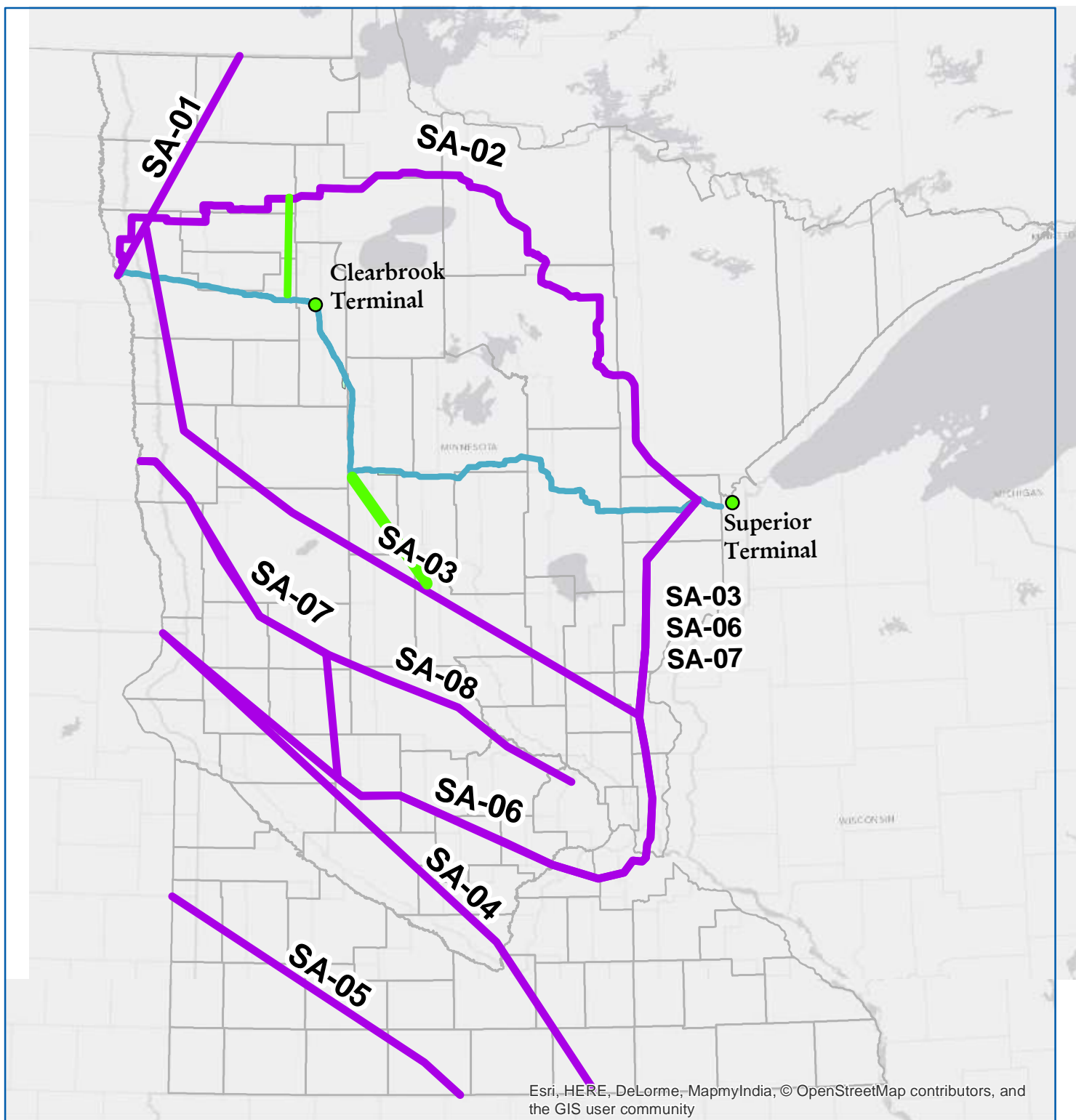
- Sandpiper Proposed Route
- Route Alternatives
- Areas where route is wider
- Route Alternative Width
- Reservation Boundary
- Chippewa National Forest
- Scientific & Natural Area
- Wildlife Management Area
- State Forest
- County Boundary
- City / Township Boundary

**LaSalle Creek**

RA-09  
RA-10

0 1 Miles





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**Legend**

- System Alternative
- System Alternative Connector
- Sandpiper Proposed Route
- County Boundary



---

**From:** Ek, Scott (PUC) [mailto:Scott.Ek@state.mn.us]  
**Sent:** Monday, May 12, 2014 3:23 PM  
**To:** willis mattison  
**Subject:** RE: Certificate of Need Criterion

Dear Mr. Mattison:

There is no separate document prepared to address Minn. Rules 7853.0130. Rather the evidence on record that is amassed through the certificate of need proceedings is used to make such decisions. Once the process gets closer to the contested case hearing process information such as testimony, rebuttal, and surrebuttal will be filed by the applicant, the Department of Commerce Division of Energy Resources, and Intervenors to the process. There is also the opportunity for the public to provide comments orally at the public hearings and during a prescribed comment period. The administrative judge will use the evidence on record to prepare a report for the Commission to use in making its final determination. As stated in the Commission's February 11, 2014, Order on Certificate of Need Application Completeness:

*VI. Issues to be Addressed*

*The ultimate issue in this case is whether NDPC's proposed pipeline meets the need criteria set forth in Minn. Stat. § 216B.243 and Minn. Rules Chapter 7853. This issue turns on numerous factors that are best developed in formal evidentiary proceedings. The parties to this proceeding should address whether the proposed project meets these criteria and address these factors. The parties may also raise and address other issues relevant to the application.*

I hope this helps to answer your questions.

Sincerely,

Scott E. Ek

Minnesota Public Utilities Commission  
121 7th Place East, Suite 350 | St. Paul, MN 55101  
(651) 201-2255 | scott.ek@state.mn.us | www.puc.state.mn.us

**From:** willis mattison [mailto:mattison@arvig.net]  
**Sent:** Saturday, May 10, 2014 11:06 AM  
**To:** Ek, Scott (PUC)  
**Cc:** Pile, Deborah (COMM)  
**Subject:** Certificate of Need Criterion

Thanks Scott,

I will pursue the answers to my previous questions on pipeline routing with the DOC.

However, on another matter, I realize that the DOC will prepare the Comparative Environmental Analysis for the pipeline routing process but is there a separate document prepared for the PUC that demonstrates the provisions of Mn Rule 7853.0130 CRITERIA are satisfied? If so, who prepares that document and when is it available for public review and comment? As you might expect I'm most interested in the provision of Section B of that rule.

Does the PUC staff or others (DOC staff) gather and enter into the "record" evidence of impacts of the proposed project and its alternatives including the "no action" alternative? Or is this largely left to the public, as with pipeline routing, to identify the reasonable alternatives and compare impacts to the proposed project

(pipeline)? I've copied Deborah Pile w/ DOC on these questions as well in the event she has information that will assist me in understanding the different ways environmental impacts are considered in both routing and CON proceedings.

Thanks,  
Willis Mattison

**B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering:**

- (1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;**
- (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;**
- (3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and**
- (4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;**

---

**From:** Ek, Scott (PUC) [<mailto:Scott.Ek@state.mn.us>]

**Sent:** Friday, May 09, 2014 11:51 AM

**To:** [mattison@arvig.net](mailto:mattison@arvig.net)

**Cc:** Eknes, Bret (PUC)

**Subject:** RE: Download Problems

Dear Mr. Mattison:

Due to ex parte communication restrictions Commission staff does not meet with individual persons, parties, or groups to discuss the material issues of a project or alternative to a project in matters pending before the Commission and that are referred to the Office of Administrative Hearings. Commission staff is, however, able to discuss issues related to procedural matters. As you know, the current comment period for the submission of alternative routes ends on May 30, 2014. Relatively soon after the close of the comment period the Commission will meet to decide which alternatives should proceed to hearing for consideration as well as the analysis in the comparative environmental analysis to be prepared by the Department of Commerce. Therefore, Commission staff is unable to discuss subject matter related to the merits of alternative routes. Commission staff is, however, able to discuss issues related to procedural matters.

I would suggest that you contact Larry Hartman at the Department of Commerce to discuss your questions regarding the requirements of alternative route submittals and preparation of the comparative environmental analysis, as they are not subject to ex parte communication requirements and is the agency tasked with preparing the comparative environmental analysis. Please feel free to contact me with any additional questions that you may have.

Sincerely,

Scott E. Ek

Minnesota Public Utilities Commission

121 7th Place East, Suite 350 | St. Paul, MN 55101

(651) 201-2255 | [scott.ek@state.mn.us](mailto:scott.ek@state.mn.us) | [www.puc.state.mn.us](http://www.puc.state.mn.us)

**From:** willis mattison [<mailto:mattison@arvig.net>]

**Sent:** Friday, May 09, 2014 10:21 AM

**To:** Ek, Scott (PUC)

**Cc:** Richard Smith; Hartman, Larry (COMM); staff, cao (PUC); Pile, Deborah (COMM)

**Subject:** RE: Download Problems

Thanks Scott, the staff got right on my complaint and got the server back up and running in short order.

On another matter, Friends of the Headwaters has been asking for meetings with DOC and PUC staff regarding the final development of alternative routes for Sandpiper per discussions with Larry Hartman, Deb Pile and others at the pre-hearing scheduling Conference call back in March. Richard Smith, President of FOH has sent several letters and email to your Departments without response. As Technical Advisor to FOH, I'm intervening in their behalf to see if we can move forward with clear, and frequent communication with department staff and this large citizen organization formed to focus on and be involved in this important decision making process.

As you know, one of the reasons for all the requests for extended comment period on routes was the time required to meet the overwhelming justification requirements in adm rules for getting any alternative routes to qualify for PUC adoption into the routing process. We did finally get the GIS Shapefiles for the preferred route and have developed a Shapefile for our alternative route "A", our top priority for PUC consideration. But, our technical person with GIS capability underwent back surgery this month, has been in re-hab since, and has been unable to make much progress past that point.

We would like to sit down with staff (DOC and PUC) to work out the details for completing these alternatives as soon as possible.

We also have some procedural information requests regarding the DOC's retention of outside consultants for the CEA preparation including the requests for qualifications and requests for proposals. We all recognize that these documents are crucial to the nature and scope of the work to be included in a CEA or and EIS. Transparency of these documents and procedural steps is essential to building public trust in the process, a commodity that has suffered some serious setbacks over the months since startup of Sandpiper. Some of the mistrust is a carry-over from Alberta Clipper and MinnCan that pretty much flew under the public radar in Northern Minnesota until piles of pipe began to accumulate along rights of way.

Can you assist us in gaining access to these steps of the process and securing the promised assistance in developing the proposed alternative route supporting analysis with your staff and with DOC? We will develop a more complete agenda for the requested meeting for staff so they can prepare for a more productive discussion but we first have to secure the intention to meet by negotiating a time/place and date. How can we move forward on this?

Willis Mattison, Tech Adv.

## Friends of the Headwaters

---

**From:** Ek, Scott (PUC) [<mailto:Scott.Ek@state.mn.us>]  
**Sent:** Friday, May 09, 2014 9:39 AM  
**To:** willis mattison  
**Subject:** RE: Download Problems

Hello Mr. Mattison,

Attached is the document you were trying to download. It is my understanding that there are some technical problems with the eDocket system at this time. I believe they are currently working to fix.

Sincerely,

[Scott E. Ek](#)

Minnesota Public Utilities Commission  
121 7th Place East, Suite 350 | St. Paul, MN 55101  
(651) 201-2255 | [scott.ek@state.mn.us](mailto:scott.ek@state.mn.us) | [www.puc.state.mn.us](http://www.puc.state.mn.us)

**From:** willis mattison [<mailto:mattison@arvig.net>]  
**Sent:** Friday, May 09, 2014 8:40 AM  
**To:** Admin, EService (PUC)  
**Cc:** Ek, Scott (PUC)  
**Subject:** Download Problems

This document cannot be downloaded at my end. Can you fix?

You have subscribed to receive documents in the following matter. A new document has been submitted.

**Submission Number:** 20145-99328  
**Docket Number:** PL6668/PPL-13-474  
**Docket Type:** Petroleum Pipeline  
**Docket Description:** Sandpiper Pipeline Project  
**Document Type:** Public Comment  
**Received Date:** 05/08/2014  
**On behalf of:** puc

REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
ST. PAUL DISTRICT, CORPS OF ENGINEERS  
180 FIFTH STREET EAST, SUITE 700  
ST. PAUL, MN 55101-1678

December 17, 2015

Operations Division  
Regulatory Branch (2013-00934-WAB)

Mr. Bobby Hahn  
Enbridge  
26 East Superior Street, Suite 313  
Duluth, Minnesota 55802

Dear Mr. Hahn:

This letter concerns the completeness review of your application for Department of the Army authorization to construct the Sandpiper pipeline project in waters of the U.S. and across navigable waters of the U.S. The portion of the project described in the application and subject to St. Paul District review extends from the Minnesota-North Dakota border to Superior, Wisconsin.

Supplemental application information was provided to the Corps on October 13 and October 30, 2015. With the receipt of the supplemental information, the application is considered complete. However, per your request, the Corps will not issue a public notice at this time.

If you have any questions, contact Bill Baer in our Bemidji office at (651) 290- 5338 or William.a.baer@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

*William Baer*  
*for* Benjamin R. Cox  
Chief, Northwest Section

cc: Linda Fisher, Fredrikson & Byron  
John Muehlhausen, Merjent



# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40

229



August 21, 2014

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

Re: Sandpiper Pipeline Project – System Alternatives  
PUC Docket Numbers: PL-6668/CN-13-473 (Certificate of Need)  
PL-6668/PPL-13-474 (Route Permit)

The Minnesota Department of Natural Resources (DNR) previously provided input regarding the Pipeline Routing Permit Application and scoping for the Comparative Environmental Assessment (CEA) for the Sandpiper Pipeline Project. During the comment periods ending April 4, 2014 and May 30, 2014, the DNR requested further analysis of a number of routes and route segments in the relative vicinity of the Preferred Route proposed by the North Dakota Pipeline Company. The DNR also attended the August 7, 2014 PUC Agenda Meeting regarding routing alternatives. We appreciate the Public Utilities Commission (PUC) determination that routes identified in DNR letters will be further analyzed in the CEA. The following comments are submitted regarding the topic of “system alternatives,” generally defined as routes that do not share one or both of the Preferred Route Clearbrook, Minnesota and Superior, Wisconsin terminals.

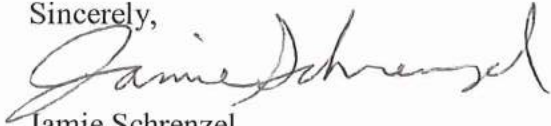
Though the DNR review did not focus on system alternatives, our previous letter stated that the DNR “supports the efforts of state and federal resource agencies to encourage analysis of topics including various routes in the event of a leak, leak risk analysis, and reducing impacts to wetlands, lakes and streams.” The Preferred Route for the Sandpiper Project is proposed in a region of the state that contains a concentration of important lakes for fisheries, trout streams, sensitive aquifers, public conservation lands, and mineral and forestry resources. The DNR is also concerned about “greenfield” routing along areas without previous disturbance.

Considering the current demand for transportation of oil from North Dakota and the Enbridge Line 3 project proposed to follow the Sandpiper Pipeline route, the Sandpiper route could become a new corridor for multiple pipelines. Therefore, the DNR encourages the PUC to strongly consider analysis of one or more system alternatives having fewer environmental and natural resource impacts than the Preferred Route in addition to route alternatives approved for inclusion in the CEA. Environmental review of one or more system alternatives should be equivalent to the analysis conducted for route alternatives. If a system alternative is included in the scope of an environmental review document, the DNR encourages interagency coordination so that the DNR can provide data regarding a new corridor prior to environmental review document publication.

Thank you for the opportunity to provide these additional comments regarding system alternatives.



Sincerely,

A handwritten signature in cursive script that reads "Jamie Schrenzel". The signature is written in black ink and is positioned above the typed name.

Jamie Schrenzel  
Principal Planner  
Environmental Review Unit  
(651) 259-5115

cc: Larry Hartman, Minnesota Department of Commerce  
Patrice Jensen, Minnesota Pollution Control Agency  
Sara Ploetz, Enbridge



US Army Corps  
of Engineers  
St. Paul District

# Information Paper

## Regulatory Program: Enbridge, Inc., Sandpiper Pipeline, Minnesota/Wisconsin



### Contact

William A. Baer, Project Manager  
(651) 290-5338  
[william.a.baer@usace.army.mil](mailto:william.a.baer@usace.army.mil)

### Description

Enbridge, Inc. proposes to construct the Sandpiper Pipeline, an interstate crude oil pipeline of 24" or more in diameter, originating at the Beaver Lodge Station south of Tioga, North Dakota, connecting through the Enbridge terminal and tank farm in Clearbrook, Minnesota, and ending at the Enbridge terminal in Superior, Wisconsin. Environmental impacts associated with the proposal have not yet been identified.

### Background

The proposed project would transport crude oil from the Bakken Formation in North Dakota to the Superior, Wisconsin, terminal. At Superior, Enbridge connects to various other pipelines, expanding access to refinery markets in the U.S. Midwest and beyond. The project's initial capacity would be 225,000 barrels per day (bpd) into Clearbrook, Minnesota, and 375,000 bpd into Superior, Wisconsin.

Enbridge has reported a planned in-service date of the first quarter of 2016 for the proposed project.

Two general corridor segments have been considered within Minnesota, connecting Clearbrook to Superior. Approximately 30 miles of the southern route would be established along a new landscape corridor. The overall project would cross approximately 65 miles of aquatic resources following this route. The southern Minnesota route is approximately 230 miles long and would be co-located with approximately 90 miles of existing pipelines and 110 miles of electrical transmission lines. The northern Minnesota route is approximately 185 miles long and would generally follow existing Enbridge pipelines.

Following the northern alignment, the overall proposed project is estimated to cross approximately 70 miles of aquatic resources. In July 2013, Enbridge informed the U.S. Army Corps of Engineers (Corps) that they do not consider the northern route to be viable based on failed negotiations with the Leech Lake Band of Ojibwe regarding a new pipeline crossing their reservation.

Proposed impacts to waters of the U.S. would be evaluated by the Corps Omaha District for crossings in North Dakota, and by the Corps St. Paul District for crossings in Minnesota and Wisconsin, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899

### Status

The Corps has not yet received a permit application from Enbridge. However, Enbridge staff and consultants have met with Corps St. Paul District and Omaha District staff to discuss the proposal. The Corps has assembled an internal team of personnel responsible for subsequent permitting, National Environmental Policy Act (NEPA) compliance, wetland delineation review, and other assignments.

### Authority

Section 404 of the Clean Water Act of 1977 and Section 10 of the Rivers and Harbors Act of 1899.



## Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

26 East Exchange Street - Suite 206  
Saint Paul, MN 55101-1667

651.223.5969  
651.223.5967 fax

info@mncenter.org  
www.mncenter.org

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March 9, 2016

Dan Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101

**VIA ELECTRONIC SERVICE**

*Re: In the Matters of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border and of the Applications of North Dakota Pipeline Company LLC for a Certificate of Need and Pipeline Routing Permit for the Sandpiper Pipeline Project.*

*MPUC Docket Nos. PL-9/CN-14-916; PL-9/PPL-15-137  
PL-6668/CN-13-473; PL-6668/PPL-13-474  
OAH Docket Nos. 65-2500-32764  
8-2500-31260; 8-2500-31259*

Dear Mr. Wolf,

In connection to the above-captioned dockets please find the enclosed Motion To Order The Department Of Commerce To Renegotiate The Memorandum Of Understanding And To Establish An Expert Advisory Council Under Minn. Stat. § 116D.03, filed on behalf of Friends of the Headwaters. Also attached is an Affidavit of Service.

Sincerely,

/s/ Kathryn M. Hoffman  
Kathryn M. Hoffman  
Staff Attorney

KMH/em

Enclosure

cc: Service List

STATE OF MINNESOTA  
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

In the Matters of the Applications of North Dakota Pipeline Company LLC for a Certificate of Need and Pipeline Routing Permit for the Sandpiper Pipeline Project

MPUC Docket Nos. PL-6668/CN-13-473  
PL-6668/PPL-13-474  
OAH Docket Nos. 8-2500-31260  
8-2500-31259

In the Matters of Enbridge, Limited Partnership, for a Certificate of Need and Pipeline Routing Permit for the Line 3 Replacement Project

PUC Docket Nos. PL-9/PPL-15-137  
PL-9/CN-14-916  
OAH Docket No. 65-2500-32764

**MOTION TO ORDER THE DEPARTMENT OF COMMERCE TO RENEGOTIATE THE MEMORANDUM OF UNDERSTANDING, AND TO ESTABLISH AN EXPERT ADVISORY COUNCIL UNDER MINN. STAT. § 116D.03**

Pursuant to Minn. R. 1400.6600 and Minn. Stat. § 116D.03, subd. 2, the Friends of the Headwaters (“FOH”) hereby moves that the Commission: 1) order the Department of Commerce to Renegotiate the Memorandum of Understanding to ensure non-discretionary involvement of the assisting agencies, and 2) order the formation of an Expert Advisory Council to assist in properly scoping the Environmental Impact Statement (“EIS”) in this case and to ensure compliance with applicable state laws and regulations concerning environmental review.

**INTRODUCTION**

FOH is gravely concerned that the preparation of the Sandpiper EIS is proceeding contrary to well-established law and procedure. Divergence between the legal requirements of environmental review and the development of the EIS, especially at this early stage, will almost certainly result in reversal on appeal, an outcome that will only lengthen the delays with which North Dakota Pipeline Company LLC (“NDPC”) and its supporters are so concerned. The recently-filed Memorandum of Understanding (“MOU”) does not alleviate these concerns; if anything, the MOU heightens these concerns, as it provides for the *possibility* of assistance from other agencies, but it does not *require* it. Any assistance is contingent on the availability of funding and staff, neither of which are presumed to exist. To prevent any further delays, FOH

requests that the Commission order the Department to renegotiate the MOU to ensure non-discretionary involvement of DNR and PCA through specified minimum commitments of funding and staff time. FOH also requests that the Commission establish an Advisory Council under § 116D.03, subd. 2(2) to assist the Department of Commerce (“the Department”) in the scoping process and to generally advise the Department on two areas of expertise: (1) MEPA compliance and implementation and (2) the environmental impacts of pipelines to be evaluated.

Recent comments from the Department suggesting that “the discretion to set schedules for contested cases, including schedules for dates of prefiled testimony, is within the ALJ’s purview,”<sup>1</sup> demonstrate a poor understanding of EIS procedure. Most importantly, these comments illustrate a faulty understanding of the Responsible Governmental Unit’s (“RGU”) legal responsibilities in EIS preparation. Perhaps this is understandable, given the novel circumstances in which the Department finds itself. Preparing an EIS is a highly specialized, technical, and difficult endeavor for any agency, but especially so for an agency unfamiliar with the process. To make the matter even more difficult, this EIS concerns two massive pipelines traversing 300 miles of sensitive Minnesota landscape and affecting 14,000-15,000 acres. It also incorporates the environmental impact of the Line 3 Replacement Project, which proposes to carry diluted bitumen across Minnesota wetlands.<sup>2</sup> A recent National Academies of Science report emphasized the uniquely challenging aspects of the environmental impact of diluted bitumen spills, which highlights the need for additional expertise as part of the EIS.<sup>3</sup> Such an EIS is much more complicated than a single-site project such as Polymet’s NorthMet proposal. Without guidance from experts well-versed in the preparation of EISs, this complexity and lack of experience greatly increases the risk that the EIS will be found inadequate upon judicial review, further delaying these proceedings.

FOH is further concerned that the Department’s role in the preparation of the EIS will be highly influenced by the privileged position of NDPC, the applicant in this case. Their reliance on NDPC for advice on EIS implementation is troubling, as recent statements from NDPC have also indicated a fundamental misunderstanding of how environmental review works under state law.

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<sup>1</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *Comments Of The Minnesota Department Of Commerce*, February 12, 2016, at page 2.

<sup>2</sup> See Docket Nos. PL-9/CN-14-916; PL-9/PPL-15-137, *Order Joining Need And Routing Dockets*, February 1, 2016, at page 10 (“The Commission authorizes a combined environmental review that considers the cumulative impact of the Sandpiper Pipeline Project and the Line 3 Project.”).

<sup>3</sup> National Academies of Sciences, Engineering, and Medicine. 2016. *Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response*. Washington, DC: The National Academies Press (“[D]iluted bitumen spills in the environment pose particular challenges when they reach water bodies. Progressive evaporative loss of the diluent leaves behind the relatively dense and viscous bitumen, which can then become submerged, perhaps first by adhering to particles, and ultimately sink to the sediments.”).

The Commission's reliance on the Department's Comments in this matter (and by implication, on the comments of NDPC) will almost certainly result in procedural delays to allow for the Court of Appeals to provide guidance on proper EIS implementation. In order to prevent such delays from occurring, FOH urges the Commission to create an Expert Advisory Council as authorized by Minn. Stat. § 116D.03, subd. 2(2), which states that each state department and agency shall "utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible." An expert advisory council could be the difference between a legally inadequate EIS and a thorough analysis that can assist both the public and decision-makers. FOH also urges the Commission to order the renegotiation of the MOU to provide for non-discretionary assistance from DNR and MPCA.

### **FACTS AND PROCEDURAL BACKGROUND**

After meeting in December 2015 to consider how to proceed in light of the Minnesota Court of Appeals decision in this case, the Commission on January 11, 2016 lifted the stay on the Certificate of Need docket, joined the need docket with the routing docket, and referred the matter to OAH for contested case proceedings.<sup>4</sup> The order also "authorize[d] the preparation of a combined EIS that addresses issues related to the certificate of need and route permit dockets" and ordered that the final EIS "shall be issued prior to the filing of intervenor direct testimony."<sup>5</sup> The Commission found that issuance of the final EIS prior to direct testimony would "best reconcile the contested case process with the MEPA process, and [] avoid delay related to use of the EIS document in that process."<sup>6</sup>

On February 1, 2016, multiple parties petitioned the Commission to reconsider that order, all making substantially identical arguments that that Commission should require issuance of the draft EIS prior to the direct testimony, not the final EIS. Also on February 1, 2016, the Department of Commerce filed a "request for clarification" in which it asked whether the Commission "intended the Department to include some or all of the six system alternatives

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<sup>4</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Order Lifting Stay, Rejoining Need And Routing Dockets, And Referring For Contested Case Proceedings*, January 11, 2016, at page 6-7.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 6.

considered in its environmental review in the EIS scoping document, in addition to the Company's preferred route and SA-03-AM."<sup>7</sup>

In response, FOH noted first that the Department's request for clarification "demonstrates a rather extraordinary misunderstanding of the Minnesota Environmental Policy Act and EISs in general."<sup>8</sup> FOH explained that MEPA does not allow the RGU to "take any steps to limit alternatives prior to scoping" the EIS.<sup>9</sup> The very purpose of scoping an EIS is to identify those alternatives that are reasonable based on the scoping comments.<sup>10</sup> To predetermine those alternatives before scoping has even taken place is a clear violation of MEPA.<sup>11</sup>

As part of its discussion on the troublingly misleading comments from the Department, FOH suggested that the Commission could head off any future procedural difficulties in EIS preparation by exercising its authority to form expert advisory councils under § 116D.03.<sup>12</sup> NDPC has misconstrued this suggestion, arguing that it is an untimely request for reconsideration of the Commission's January 11, 2016 Order.<sup>13</sup> To the contrary, FOH was not requesting any changes or modifications to the Commission's January 11, 2016 Order. FOH believes that order was both justified and clearly lawful, and has not asked for it to be modified in any way. However, FOH does have continuing concerns about how that order is being implemented by the Department. FOH is concerned that the preparation of the Sandpiper EIS is proceeding contrary to well-established law and procedure. FOH also believes that the Commission has clear ongoing authority under MEPA to establish advisory councils, and to clarify its position, FOH is submitting the present motion to establish such a council.

On March 3, 2016, the Department of Commerce filed its Memorandum of Understanding ("MOU") with MPCA and DNR regarding the preparation of the EIS for the proposed Sandpiper and Line 3 pipelines. The MOU fails to commit any minimum level of staffing, resources or expertise from MPCA or DNR. It also includes several caveats that could easily prevent any cooperation whatsoever between the agencies.

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<sup>7</sup> Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Request For Clarification*, February 1, 2016, at page 3.

<sup>8</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Response To Minnesota Department Of Commerce's Request For Clarification And Other Parties' Motions For Reconsideration*, February 11, 2016, at page 1. FOH also responded to the many petitions for reconsideration, noting that the Commission was well within its statutory discretion to control the timing of the EIS issuance, as it did in this case.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (citing Minn. R. 4410.2100, subp. 1).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 7.

<sup>13</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *North Dakota Pipeline Company LLC's Response To Friends Of The Headwaters, Carlton County Land Stewards, And Honor The Earth's Requests For Reconsideration*, February 22, 2016, at page 2-3.



## ARGUMENT

### I. THE MOU FILED BY THE DEPARTMENT FAILS TO FULFILL THE COMMISSION'S PREVIOUS ORDER.

The MOU fails to obligate either the DNR or the MPCA to even a minimum level of non-discretionary participation in the EIS, and therefore should be renegotiated. The Commission, in its previous order, authorized the Department to “enter into an agreement with the Department of Natural Resources and the Pollution Control Agency to ensure that the EIS fulfills the requirements of MEPA.”<sup>14</sup> In the discussion that led to this order, Commissioners expressed concern about the anemic participation of these agencies during the Certificate of Need proceedings. During the Certificate of Need proceedings, those agencies were only able to participate to the extent that minimal staff was available to comment, unsolicited and uncompensated, during the public comment periods for the project. The expectation was that a formal agreement between the Department and MPCA and DNR would remedy that deficiency by *dedicating* staff time to EIS assistance. It would give the Department a way to leverage DNR and MPCA resources.

Unfortunately, the MOU filed by the Department last week fails to leverage any resources from MPCA and DNR. Rather, it provides multiple caveats that may result in little or no cooperation at all between the agencies, despite the fact that the Department is embarking on a major EIS with limited experience. Rather than make MPCA and DNR co-lead agencies, therefore obligating them to provide meaningful assistance, the MOU is clear that the Department is the sole lead agency on the EIS.<sup>15</sup> The agreement contains laudable language that the assisting agencies will “ensure that each EIS fulfills applicable MEPA requirements,” but without any specific commitment of resources, this language is largely aspirational.<sup>16</sup> Agency assistance is predicated on the assisting agencies using their “best efforts to provide the staffing resources necessary to accomplish the purpose of this MOU.”<sup>17</sup> Even these “best efforts” are subject to availability, however, as the MOU establishes that “[a]ll obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources for the work undertaken by the Agencies to accomplish the MOU’s purpose and allocation of responsibilities.”<sup>18</sup> This all-encompassing caveat destroys the very purpose of the document itself, which is to ensure that the Department

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<sup>14</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Order Lifting Stay, Rejoining Need And Routing Dockets, And Referring For Contested Case Proceedings*, January 11, 2016, at page 6-7.

<sup>15</sup> See Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Memorandum Of Understanding Between The Minnesota Department Of Commerce And The Minnesota Department Of Natural Resources And The Minnesota Pollution Control Agency*, March 3, 2016, at page 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

has the assistance necessary to produce an adequate EIS. If that assistance and EIS oversight is in fact nominal or even hypothetical because of agency resource limitations, the MOU is rendered virtually meaningless.

It need not be so. An effective MOU could be crafted by the inclusion of a few key provisions that turn potential assistance and oversight into actual assistance and oversight. At a minimum, such an MOU could designate DNR and/or MPCA as RGU and co-lead agencies; or, in the alternative, it could require participation by those agencies in certain areas where they have expertise. The document could also specify areas where DNR and MPCA will provide insight and resources specific to each agencies' areas of expertise, including experience with MEPA implementation. Rather than expressing a desire for the assisting agencies to help with EIS preparation, the MOU could *commit* each agency to a minimum level of resources, staff, or expertise. Importantly, since the MOU appears to imply that the availability of funding and staff time could be at a premium, Minnesota's environmental review regulations specify that the costs of scoping an EIS are "part of the reasonable costs of preparing, reviewing, and distributing the EIS and are to be assessed to the project proposer by the RGU."<sup>19</sup> These scoping costs include staff time, including direct salary and fringe benefit costs, the cost of consultants hired by the RGU, and other direct and indirect costs of the RGU incurred during the scoping process.<sup>20</sup> The MOU could implement this provision by specifying that MPCA and DNR are to be compensated for their contributions through the EIS costs that are assessed to the project proposer. Utilizing this provision could ensure that adequate agency resources are ready and available to provide crucial oversight and assistance to the Department. FOH therefore urges the Commission to direct the Department to renegotiate the MOU to include non-discretionary assistance from MPCA and DNR.

## **II. THE COMMISSION IS AUTHORIZED BY § 116D.03 TO CREATE AN EXPERT ADVISORY COUNCIL THAT WOULD PROVIDE CRUCIAL OVERSIGHT AND ASSISTANCE WITH THE SCIENTIFIC, TECHNICAL AND PROCEDURAL ASPECTS OF EIS SCOPING**

MEPA authorizes RGUs such as the Commission to engage in a wide range of measures to ensure thorough and adequate environmental review, including establishing an expert panel. Sections 116D.02-.03 provide a set of statutory guidelines framing the RGU's responsibilities that are coherent and mutually reinforcing. They are also sweeping in language, and worth quoting in full, as it is easy to forget the scope of this state's clearly expressed policy:

The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances

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<sup>19</sup> Minn. R. 4410.6200, subp. 3 (2015).

<sup>20</sup> *Id.*, subp. 1.

and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, *to use all practicable means and measures, including* financial and *technical assistance*, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.<sup>21</sup>

In order to carry out these grand goals, the statute continues, “it is the continuing responsibility of the state government *to use all practicable means*, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources,” so that the state may (among other goals) “discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner.”<sup>22</sup>

Although the primary means of implementing these lofty goals is through the assurance that important governmental actions are informed by considerations of environmental impacts through environmental review such as EISs, they are not the only means. Section 116D.03 imposes a host of duties on state departments and agencies that are designed to further implement the notion that state actions should be guided not only by principles of economic and technological efficiency, but by concern for the protection of natural resources and habitats. The law thus directs that:

All departments and agencies of the state government *shall*:

.....

(2) utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose *there shall be established advisory councils* or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible.<sup>23</sup>

Both the federal and state environmental review laws are designed not only to inform decisionmakers but to involve the public and affected persons in the decisionmaking process itself. A core requirement of both MEPA and NEPA is that significant governmental action cannot be taken until environmental impact documents are disseminated to the public and

<sup>21</sup> Minn. Stat. § 116D.02, subd. 1 (2015) (emphasis added).

<sup>22</sup> *Id.*, subd. 2 (emphasis added).

<sup>23</sup> Minn. Stat. § 116D.03, subd. 2(2) (2015) (emphasis added).

individuals have had the opportunity to comment on scoping and drafts of those documents.<sup>24</sup> State environmental review regulations are quite specific on this point, stating that the process “is designed to . . . provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making.”

The requirement to establish expert advisory councils to assist in environmental review, in other words, is not some mere formality or forgotten technicality; it is both a mandatory directive (such councils “shall be established”<sup>25</sup>) and a core function of the law. It is one of the few ways in which MEPA differs from NEPA, its federal corollary and the source of much of MEPA’s language. NEPA states that all federal agencies shall “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment.”<sup>26</sup> MEPA goes one step further: all state departments and agencies shall “utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible.”<sup>27</sup>

MEPA adopts the NEPA language almost verbatim, but adds the second clause requiring the establishment of advisory councils to aid state agencies in their environmental review. This requirement, so distinctive and clear, cannot be ignored. Indeed, NEPA’s § 102 (quoted above) to which § 116D.03 adds the additional advisory council requirement, has been held to be a rigid, enforceable duty:

Thus the Section 102 duties are not inherently flexible. They must be complied with to the fullest extent, unless there is a clear conflict of statutory authority. Considerations of administrative difficulty, delay or economic cost will not suffice to strip the section of its fundamental importance. We conclude then, that Section 102 of NEPA mandates a particular sort of careful and informed decisionmaking process and creates judicially enforceable duties.<sup>28</sup>

As it is drawn so closely to its federal counterpart, MEPA must be interpreted similarly. The statutory mandate to establish expert advisory councils was tailor-made for the very sorts of circumstances seen in this matter: an inexperienced agency charged with a technical, difficult,

<sup>24</sup> See Minn. R. 4410.0300, subp. 3, 4 (2015); 40 C.F.R. § 1506.6 (2015);

<sup>25</sup> Minn. Stat. § 116D.03, subd. 2(2) (2015).

<sup>26</sup> 42 U.S.C. § 4332(A) (2015).

<sup>27</sup> Minn. Stat. § 116D.03, subd. 2(2) (2015).

<sup>28</sup> *Calvert Cliffs Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

and overwhelming task, exhibiting signs of its unfamiliarity with crucially important MEPA procedures, and relying on the legally incorrect assertions of the project proposer, who has also betrayed its unfamiliarity with those same MEPA procedures. Fortunately, MEPA allows for guidance in these circumstances, and the Commission should avail itself of that guidance by establishing an expert advisory council.

This council could be composed of experts familiar with the EIS process as well as experts that are well-versed in the particular scientific and technical challenges associated with a pipeline project of this scope. Perhaps most importantly, however, state law is quite clear that such a council must be *neutral* and *transparent*.<sup>29</sup> A baseline requirement of such a council, therefore, is that it must not include ‘experts’ that are employees of, affiliates of, or contractors with NDPC. As the project proposer, NDPC will have ample opportunities to let their interests and preferred assumptions be known. But the central nature of environmental review is that it is not simply a post-hoc rationale for justifying predetermined decisions.<sup>30</sup> It is designed to provide objective and authoritative information that would otherwise not be accounted for in the decision. Any expert advisory council formed to consult and advise on the EIS process must therefore be independent, neutral and transparent. Including employees or affiliates of NDPC would violate this general principle, and would violate § 116D.03, subd. 2(3), which requires all state departments and agencies to develop methods and procedures “that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations.” As the project proposer staking significant capital investments and future profits on the outcome of this EIS, NDPC has an explicitly economic interest in the content of the eventual document. Their presence on an expert advisory council would by necessity result in ‘advice’ that was neither independent nor neutral, contrary to state policy on environmental review.<sup>31</sup>

## **II. THE DEPARTMENT’S RECENT COMMENTS DEMONSTRATE AN UNFAMILIARITY WITH EIS PROCEDURES THAT WILL SIGNIFICANTLY INCREASE THE RISK OF AN INADEQUATE EIS, THUS FURTHER DELAYING THESE PROCEEDINGS**

As FOH noted in its February 11, 2016 Response, the Department has become accustomed to the Comparative Environmental Assessment process authorized under Minnesota

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<sup>29</sup> Minn. Stat. § 116D.03, subd. 2(3) (all state departments and agencies shall “identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations”); Minn. R. 4410.0300, subp. 4 (objective of environmental review is to provide *usable* information, to help maintain public awareness of environmental concerns, and encourage accountability in public decision making); Minn. R. 4410.0300, subp 3 (“Environmental documents shall not be used to justify a decision”).

<sup>30</sup> Minn. R. 4410.0300, subp. 3 (2015).

<sup>31</sup> Minn. R. 4410.0300, subp. 4;

Rules Chapter 7852. They have never conducted an EIS on a pipeline before. Indeed, no agency in Minnesota ever has, to FOH's knowledge.<sup>32</sup> Such a novel situation cries out for additional consultation and advice. The novelty of these circumstances alone would typically justify the creation of an experienced council to offer advice, but it is especially necessary here, where the Commission has numerous indications that the Department's understanding of the EIS process is, at best, incomplete.

The Department's recently-filed Memorandum of Understanding ("MOU") with MPCA and DNR will not remedy this problem. Although MPCA and DNR have considerably more expertise with EISs, they have not conducted a pipeline EIS, and would still benefit from expertise specific to pipelines such as Mr. Stolen, and an expert on diluted bitumen. Nor, of course, can they offer the expertise on treaty rights and tribal resources that White Earth and Mille Lacs would bring. Additionally, the MOU is limited and provides no assurance of meaningful cooperation between agencies. MPCA and DNR are not co-lead agencies, and thus have no legal obligation to ensure a quality EIS. There is no discussion in the MOU of how or whether MPCA and DNR will provide staff. The MOU provides for a separate agreement, which has not been filed, to provide for "specific staffing needs." It also states that "All obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources..."<sup>33</sup> Thus, any real involvement of MPCA and DNR is both entirely discretionary by the Department, and contingent on other factors, including the availability of funding and staff. Put simply, there is nothing in this agreement that ensures quality involvement by MPCA and DNR.

The Department will make a series of other internal decisions going forward that are not subject to public scrutiny yet are extremely significant, especially for an agency that has not previously conducted a full EIS on a pipeline. An advisory committee as proposed by FOH would not have a "veto" over any of these decisions, but would provide Commerce the opportunity to obtain input before making an important decision. Such an advisory council

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<sup>32</sup> FOH notes, however, that there was state agency involvement in an EIS for the Alberta Clipper pipeline, for which the U.S. Department of State was the lead agency. The Department of State notes that they consulted with other federal agencies in preparing the EIS for the Alberta Clipper project, and that "state agencies also were consulted to ensure that their needs for analyses in relation to their respective state permitting processes would be reflected in the EIS." U.S. Dep't of State, Bureau of Energy Resources, *Final Environmental Impact Statement Executive Summary*, available at <http://www.state.gov/e/enr/applicant/applicants/202453.htm>. (last visited March 1, 2016). Such consultation, clearly, is a far cry from the substantive and procedural duties encompassed by the bearing the sole responsibility for preparing an adequate EIS, particularly where the entire burden falls on the state agency.

<sup>33</sup> See Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Memorandum Of Understanding Between The Minnesota Department Of Commerce And The Minnesota Department Of Natural Resources And The Minnesota Pollution Control Agency*, March 3, 2016, at page 2.

would increase transparency and produce better, more informed decisions, as envisioned by the drafters of MEPA.

Recently the Commission received Comments from the Department that indicate a fundamental misunderstanding of environmental review in general, and MEPA requirements in particular. The DOC suggested that “the discretion to set schedules for contested cases, including schedules for dates of prefiled testimony, is within the ALJ’s purview.”<sup>34</sup> As these comments were submitted in response to the Commission’s Order that the final EIS be issued prior to direct testimony in the contested case proceedings, they appear to indicate the Department’s view that OAH has the discretion to determine when in the contested case proceedings the final EIS must be issued. To the extent that these schedules include dates by which the EIS must be issued, this statement is legally incorrect, and therefore grossly misleading to the Commission. Allowing OAH to determine at what point the final EIS be issued would be an abdication of the Commission’s (and the Department’s, as the Commission’s delegate) responsibilities as the RGU in this matter, thereby clearly violating MEPA.<sup>35</sup>

The Commission is the RGU in this matter. It is the RGU’s responsibility to ensure that the EIS is prepared in accordance with state law,<sup>36</sup> and any abdication of that responsibility is a violation of law:

NEPA establishes environmental protection as an integral part of the [RGU’s] basic mandate. The primary responsibility for fulfilling that mandate lies with the [RGU]. Its responsibility is not simply to sit back, like an umpire, and resolve adversary contentions at the hearing stage. Rather, it must itself take the initiative of considering environmental values at every distinctive and comprehensive stage of the process beyond the staff’s evaluation and recommendation.<sup>37</sup>

As part of this obligation, the *RGU* determines at what stage the EIS is to be prepared, not OAH. Because MEPA is fundamentally a procedural law, the timing of the EIS preparation

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<sup>34</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *Comments Of The Minnesota Department Of Commerce*, February 12, 2016, at page 2.

<sup>35</sup> See *Calvert Cliffs*, 449 F.2d at 1119 (the only agency in a position to ensure decisions are informed by environmental considerations is the RGU; abdication of that key role is a violation of law); *Sierra Club v. Lynn*, 502 F.2d 43, 59 (5th Cir. 1974) (environmental review requirements are directed only to the RGU; delegation of those responsibilities is an unlawful abdication).

<sup>36</sup> See Minn. Stat. § 116D.04, subd. 2a; subd. 2a(g); subd. 2a(h) (2015); Minn. R. 4410.0400, subp. 2 (“RGU’s shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.”).

<sup>37</sup> See *Calvert Cliffs*, 449 F.2d at 1119.

is an essential determination under the law.<sup>38</sup> As federal courts have noted, it is an “important fact of administrative life” that “as time goes on, it will become ever more difficult to undo an improper decision.”<sup>39</sup> MEPA codifies this concern by requiring that certain decisions be informed by a proper consideration of the environmental effects of that decision, and that such consideration take place early enough to influence the decision making process. The primary purpose of MEPA is therefore to identify and study the environmental impacts of a particular decision *before* that decision is made. The Act’s lodestar, in other words, is *informed choice*:

The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment. A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents. Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens *early in the decision making process*.

.....

Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.<sup>40</sup>

Subpart 4 of that Rule states that the process is designed to “provide *usable* information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project.”<sup>41</sup> If the central purpose of the law is to inform a particular decision, the timing of that information’s delivery will determine whether that information is usable or even relevant, which is why the Rules direct the information to be generated and delivered as early as possible.<sup>42</sup>

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<sup>38</sup> See *Calvert Cliffs*, 449 F.2d at 1113 (“However, [NEPA] also contains very important ‘procedural’ provisions – provisions which are designed to see that all federal agencies do in fact exercise the substantive discretion given them. These provisions are not highly flexible. Indeed, they establish a strict standard of compliance.”).

<sup>39</sup> *Sierra Club v. Marsh*, 872 F.2d 497, 503 (1st Cir. 1989).

<sup>40</sup> Minn. R. 4410.0300, subp. 3 (emphasis added).

<sup>41</sup> *Id.*, subp. 4 (emphasis added).

<sup>42</sup> See, e.g., *Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir. 1974) (“The procedures required by NEPA . . . are designed to secure the accomplishment of the vital purpose of NEPA. That result



On judicial review, the central question for the court is whether the agency took a “‘hard look’ at the salient issues,”<sup>43</sup> and in answering this question the *timing* of the EISs issuance is a critical detail. In the present matter it was in fact the *timing* of the EIS issuance that was reversed on appeal, when the Court determined that this Commission could not issue a Certificate of Need without conducting an EIS first.<sup>44</sup> It is therefore a critical role for the RGU to determine when the EIS is to be issued, and abdicating that role to OAH would violate MEPA. Just as the deferral of the EIS was found unlawful in this matter, it would have been similarly unlawful if the RGU had simply allowed OAH to decide whether the EIS would be issued early or deferred until later, which is what the Department is suggesting in its comments to the Commission.

But the RGU’s responsibilities extend beyond merely determining when the EIS shall be issued. Its responsibilities are to oversee the entire process of environmental review as it relates to the decision being considered, to ensure that the decision incorporates a proper consideration of environmental effects. The statute is clear that it is the RGU’s responsibility to ensure coordination between environmental review and permitting.<sup>45</sup> This responsibility is a core function of the RGU, not a mere formality. The coordination between environmental review and permitting is the heart of MEPA, and the RGU must ensure that this coordination renders the environmental review useful, timely, and relevant to properly inform the permitting decision. For the OAH to undertake a crucial role in this regard, by determining when in the contested case proceedings the final EIS should be issued, would be a direct violation of the RGU’s coordination responsibilities.

If there is a conflict between OAH’s procedural rules and an agency order made pursuant to state law, including MEPA, the agency order takes precedence. This is made clear by the state law itself. In cases requiring multiple permits, for instance, the agency may consolidate the hearing process, “notwithstanding any law or rule to the contrary.”<sup>46</sup> That statute also directs the agency to “establish appropriate procedures for the consolidated hearing process.”<sup>47</sup> When it comes to complying with state environmental review laws, the agency cannot delegate crucial procedural milestone scheduling to a non-RGU agency like OAH.

Fortunately, the Commission did not delegate that crucial role in this instance. Rather, it determined that contested case proceedings must begin after the issuance of the final EIS, “[t]o

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can be achieved only if the prescribed procedures are faithfully followed; grudging, pro forma compliance will not do.”).

<sup>43</sup> See, e.g., *Friends of Twin Lakes v. Roseville*, 764 N.W.2d 378, 381 (Minn. Ct. App. 2009).

<sup>44</sup> *In re North Dakota Pipeline Co., LLC*, 869 N.W.2d 693, 698 (Minn. Ct. App. 2015) (“In this case, the completion of an EIS at the certificate of need stage satisfies the imperative identified above by ensuring decision-makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it.”).

<sup>45</sup> Minn. Stat. § 116D.04, subd. 2a(g) (2015).

<sup>46</sup> Minn. Stat. § 116D.04, subd. 2a(g) (2015).

<sup>47</sup> *Id.*

best reconcile the contested case process with the MEPA process, and to avoid delay related to use of the EIS document in that process.”<sup>48</sup> As described in FOH’s February 11, 2016 Response to Minnesota Department of Commerce’s Request for Clarification and Other Parties’ Motions for Reconsideration, the Commission has the legal authority and discretion to take this action, as part of their obligation to ensure that the eventual decision is properly informed.

But the Commission’s suggestion that this scheduling decision is within the purview of the OAH is an alarmingly incorrect statement coming from the RGU’s delegate. Combined with its previous conduct in this case, they presage a very high risk of producing an EIS that is either poorly substantiated, overly restrictive in scope, or otherwise affected by procedural error. Their recent statements are merely the latest instance of a series of events demonstrating an inexperience and unfamiliarity with fundamental principles of environmental review. As but one example, FOH understands that the Department is currently renegotiating an earlier contract with Cardno, rather than put out a new Request for Proposal from other consultants. These negotiations are taking place without oversight or assistance, and these decisions can have irreversible consequences.

EIS preparation is a difficult and technical process, but because MEPA is a fundamentally procedural law, it is critical that the proper procedures and timing are followed. The Department’s inexperience with this process should not be allowed to jeopardize the integrity of both the process and the eventual document, but the Commission can help protect the process by creating an expert advisory council to assist the Department.

### **III. THE COMMISSION’S RELIANCE ON NPDC WOULD CLEARLY VIOLATE MEPA REQUIREMENTS**

FOH is concerned that the Department of Commerce may be allowing NDPC to prepare the scoping EAW, which is unlawful under MEPA. As the Responsible Governmental Unit for this EIS, the Commission is responsible for the content of both the scoping EAW and the EIS.<sup>49</sup> The Commission may not delegate the responsibility for preparation of these key documents to NDPC.

The reasoning for this requirement should be self-evident. NDPC has a strong interest in a narrow EIS that rejects consideration of any serious alternatives and minimizes potential environmental impacts. Under no circumstances should such a conflicted entity be preparing a

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<sup>48</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Order Lifting Stay, Rejoining Need And Routing Dockets, And Referring For Contested Case Proceedings*, January 11, 2016, at page 6.

<sup>49</sup> Minn. R. 4410.1400 (“The EAW shall be prepared by the RGU or its agents... The RGU shall be responsible for the completeness and accuracy of all information.”); Minn. Stat. § 116D.04, subd. 2a (“Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit.”) (emphasis added).

document that is intended to educate the public and inform decision-makers by describing “the proposed action in detail, analyz[ing] its significant environmental impacts, discuss[ing] appropriate alternatives to the proposed action and their impacts, and explor[ing] methods by which adverse environmental impacts of an action could be mitigated.”<sup>50</sup>

Moreover, NDPC is already trying to mislead the Commission in violation of MEPA in its comments. In its February 11, 2016 Response to the Petitions for Reconsideration, NDPC acknowledges that making scoping decisions before the scoping process has been completed would be inconsistent with state law. However, it then argues that, should the Commission consider the Department’s Request for Clarification, it should inform the Department that “six system alternatives were considered for inclusion within the EIS but rejected (and therefore not proposed for inclusion within the EIS) because they do not meet the identified purpose and need for the Project.”<sup>51</sup> This statement is a clear violation of state environmental review laws, and illustrates elementary misconceptions of how to scope an EIS under state regulations.

Under MEPA, the purpose of the scoping process is to focus the EIS on the relevant issues by:

Identify[ing] only those potentially significant issues relevant to the proposed project, define the form, level of detail, content, *alternatives*, time table for preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.<sup>52</sup>

*After* scoping is complete, the RGU will make a “scoping decision” that contains, among other things, the alternatives that will be addressed in the EIS.<sup>53</sup> Thus, it is appropriate for DOC to turn to the Commission for a scoping decision on alternatives, but it is premature to do so prior to scoping.

Eliminating alternatives prior to scoping is illegal under MEPA. This Commission’s decision to grant a certificate of need to the Sandpiper Pipeline was overturned by the Court of Appeals because, under MEPA, the State may not grant a permit to a project prior to completion of an EIS.<sup>54</sup> But the reason for this prohibition is that agencies may not pre-determine significant

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<sup>50</sup> Minn. Stat. § 116D.04, subd. 2a.

<sup>51</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *North Dakota Pipeline Company LLC’s Response To Petitions For Reconsideration*, February 11, 2016, at page 3.

<sup>52</sup> Minn. R. 4410.2100, subp. 1 (emphasis added).

<sup>53</sup> *Id.* at subp. 6.

<sup>54</sup> Minn. Stat. § 116D.04, subd. 2b; *In re North Dakota Pipeline Co., LLC*, 869 N.W.2d 693, 698 (Minn. Ct. App. 2015)(“Therefore, based on the plain language of subdivision 2b, the MPUC’s issuance of a certificate of need constitutes a final governmental decision that is prohibited until the required environmental review is completed.”).

decisions about the project prior to the EIS process.<sup>55</sup> The EIS process is designed to thoroughly vet a proposed project; it is not designed to affirm a decision that was already made. Courts have regularly overturned efforts by agencies to control and limit the outcome of an EIS in this way.

As noted in FOH's Response to Minnesota Department of Commerce's Request for Clarification and Other Parties' Motions for Reconsideration, federal courts have held that agencies that take steps to limit the range of potential alternatives prior to completion of environmental review violate NEPA.<sup>56</sup>

Similarly, if the Commission instructs the Department to eliminate certain alternatives from consideration prior to the scoping process, it will violate MEPA and fail to take a "hard look" at the environmental consequences of this pipeline. The prohibition against action by the state prior to the EIS is not limited merely to granting a permit, but to *any* action that would limit the range of alternatives considered in the EIS too early in the process, thereby "seriously impeding the degree to which their planning and decisions could reflect environmental values."<sup>57</sup> The EIS stage is deliberative – as the Court of Appeals noted, it is intended to study the project and the alternatives early in the process, such that "important environmental effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."<sup>58</sup> To refuse to study system alternatives at this stage is no different than granting a certificate of need prior to an EIS – it commits the State to a particular project and location before the environmental effects have been fully understood.

NDPC's comments in this regard are unusual and alarming not only because they would constitute reversible error if followed by the Commission, but also because NDPC's reasoning is based on the Commission's Order Granting Certificate of Need that was *invalidated* for failure to comply with environmental review laws.<sup>59</sup> It is frankly absurd to suggest that the Commission may restrict the alternatives prior to scoping, in violation of MEPA, because the Commission had already rejected those alternatives in an Order that was made illegally in this very case. The Court of Appeals found that the Commission could not grant a certificate of need specifically because it was considered prior to completion of an EIS. NDPC is now suggesting to the

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<sup>55</sup> *In Re NDPC*, 869 N.W.2d at 698-99 ("In this case, the completion of an EIS at the certificate of need stage satisfies the imperative identified above by ensuring decision-makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it.").

<sup>56</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *FOH's Response To Minnesota Department Of Commerce's Request For Clarification And Other Parties Motions For Reconsideration*, February 11, 2016, at page 3-4.

<sup>57</sup> *Metcalf*, 214 F.3d at 1143-44 (quoting *Save the Yaak Comm. v. Block*, 840 F.2d 714, 718-19 (9th Cir. 1988)).

<sup>58</sup> *In Re NDPC*, 869 N.W.2d at 698.

<sup>59</sup> See Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *North Dakota Pipeline Company Llc's Response To Petitions For Reconsideration*, at page 3.

Commission that it may disregard the Court of Appeals opinion and re-adopt that invalidated decision, and in so doing, illegally restrict the alternatives prior to scoping. This is, to say the least, faulty reasoning, and the fact that it is coming from the project proposer and a party of obvious significance and influence in these proceedings makes the need for oversight quite clear.

If the Commission were to rely on NDPC's preparation of an EAW, or its statements in this matter, its actions would likely be reversed on appeal for a second time. The primary parties in this matter – the RGU's delegate and the project proposer – have amply demonstrated an unfamiliarity with, and dangerously erroneous understanding of, the legal requirements for EIS preparation. Rather than risk further delays, the Commission should exercise its authority to create an advisory council that can correct any such errors before they are propagated into an inadequate EIS document.

### CONCLUSION

EIS preparation is a complex task, substantively as well as procedurally. To FOH's knowledge, this is the first instance in which a Minnesota agency has conducted an EIS on a pipeline without federal support. It is a difficult task even for an experienced agency, but for an inexperienced agency like the Department, assistance and oversight are critical, especially where it may be relying on the project proposer to the detriment of the EIS. FOH therefore urges the Commission to utilize all resources available to it and the Department, including a revised MOU providing for non-discretionary assistance from DNR and PCA, and the advisory councils of § 116D.03.

Dated: March 9, 2016

Respectfully submitted,

/s/ Kathryn Hoffman

/s/ Kevin P. Lee

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Kathryn Hoffman  
 Kevin P. Lee  
 Minnesota Center for Environmental Advocacy  
 26 E. Exchange Street, Ste. 206  
 St. Paul, MN 55101  
 (651) 287-4861

*Attorneys for Minnesota Center for  
 Environmental Advocacy and Friends of the  
 Headwaters*

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matters of Enbridge, Limited Partnership, for  
a Certificate of Need and Pipeline Routing Permit  
for the Line 3 Replacement Project

MPUC Docket Nos. PL-9/PPL-15-137  
PL-9/CN-14-916  
OAH Docket No. 65-2500-32764

**AFFIDAVIT OF SERVICE**

In the Matters of the Application of North Dakota  
Pipeline Company LLC for a Certificate of Need for  
the Sandpiper Pipeline Project in Minnesota

MPUC Docket Nos. PL-6668/CN-13-473  
PL-6668/PPL-13-474  
OAH Docket Nos. 8-2500-31260  
8-2500-31259

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF RAMSEY )

Erin Mittag, being duly sworn, says that on the 9<sup>th</sup> day of March, 2016, she served via e-dockets the following:

- Motion To Order The Department Of Commerce To Renegotiate The Memorandum Of Understanding And To Establish An Expert Advisory Council Under Minn. Stat. § 116D.03, filed on behalf of Friends of the Headwaters

on the following persons, in this action, by filing through e-dockets or mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at St. Paul, Minnesota, directed to said persons at the last known mailing address of said persons:

Attached Service List.

  
Erin Mittag

Subscribed and sworn to before me  
this 9<sup>th</sup> day of March, 2016

  
Karen Moss



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street  Haskell, OK 74436	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Erik	Best	erik.best@riotinto.com	Kennecott Exploration Company	224 N 2200 W  Salt Lake City, UT 84116	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118  Deer River, Minnesota 56636	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Paul	Blackburn	paul@paulblackburn.net		PO Box 17234  Minneapolis, MN 55417	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	4748 Wisconsin Ave NW  Washington, DC 20016	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Vanta E.	Coda II	N/A	Avon Township	1200 Port Terminal Drive  Duluth, MN 55802-2609	Paper Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Michelle	Cote	michelle.cote@co.polk.mn.us	Polk County Property Records	612 N. Broadway Street suite 207  Crookston, MN 56716	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Leigh	Currie	lcurrie@mncenter.org	Minnesota Center for Environmental Advocacy	26 E. Exchange St., Suite 206  St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Randall	Doneen	randall.doneen@state.mn.us	Department of Natural Resources	500 Lafayette Rd, PO Box 25  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Peter	Erlinder	proferlinder@gmail.com	International Humanitarian Law Institute	325 Cedar St. Suite 308 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
John R.	Gasele	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	150 S Fifth St Ste 2300  Minneapolis, MN 54002	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jon	Godfread	Jon@ndchamber.com	Greater North Dakota Chamber	2000 Schafer Street  Bismarck, ND 58501	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620  Saint Paul, Minnesota 55164-0620	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Lowell	Hassler	lhassler@blm.gov	BLM Bureau Land Management	920 NE Main  Lewistown, MT 59457	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Danny	Hendrix	N/A	Pipeline Union 798	PO Box 470798  Tulsa, OK 74147-0798	Paper Service	No	OFF_SL_13-473_OFF_SL_13-473_Official



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Helene	Herauf	Laney@ndchamber.com	Greater North Dakota Chamber	PO Box 2639  Bismarck, ND 58502	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kathryn	Hoffman	khoffman@mncenter.org	Minnesota Center for Environmental Advocacy	26 E. Exchange St Ste 206 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Frank	Hornstein	Rep.Frank.Hornstein@house.mn		100 MLK Blvd  saint paul, mn 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street  St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
Patrice	Jensen	patrice.jensen@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd N  St. Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Rachel	Kitze Collins	rakitzecollins@locklaw.com	Lockridge Grindeal Nauen PLLP	100 Washington Ave S Suite 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Eric	Le Dain	N/A	Enerplus Resources (USA) Corporation	US Bank Tower, Suite 2200  950 - 17th Street Denver, CO 80202-2805	Paper Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
Eric	Lipman	eric.lipman@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 551640620	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Brian	Meloy	brian.meloy@stinson.com	Stinson, Leonard, Street LLP	150 S 5th St Ste 2300  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jessica	Miller	Jessica.Miller@whiteearthnsn.gov	White Earth Band of Ojibwe	P.O. Box 238  White Earth, MN 56591	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Charles	Nauen	cnnauen@locklaw.com	Lockridge Grindal Nauen	Suite 2200 100 Washington Avenue South Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N  Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418  White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road  St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Neil	Roesler	nroesler@vogellaw.com	Vogel Law Firm	218 NP Avenue PO Box 1389 Fargo, ND 58107	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jeremy	Sanoski	jeremy.sanoski@state.mn.us	MN Pollution Control Agency	7678 College Rd Suite 105  Baxter, MN 56425	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Robert	Schoneberger	bob.schoneberger@unitedpiping.us	United Piping Inc	4510 Airport Road  Duluth, MN 55811	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
David	Shaffer	david.shaffer@startribune.com		425 Portland  Minneapolis, MN 55488	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Eileen	Shore	eileenshore@outlook.com	Eileen Shore	3137 42nd Ave So  Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Bill	Sierks	bill.sierks@state.mn.us	State of MN - MPCA	520 Lafayette Rd N  St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583  Park Rapids, MN 56470	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Byron E.	Starns	byron.starns@stinson.com	Stinson Leonard Street LLP	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Randy V.	Thompson	rthompson@nmtlaw.com	Nolan, Thompson & Leighton	5001 American Blvd W Ste 595  Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kirk	Titus	kirk.titus@crowwing.us	Crow Wing County Land Services	322 Laurel Street Suite 12  Brainerd, MN 56401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Gerald	Von Korff	jvonkorff@rinkenoonan.com	Rinke Noonan	PO Box 1497  St. Cloud, MN 56302	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 710  St. Paul, MN 55102	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309  Duluth, MN 55802	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Cam	Winton	cwinton@mnchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
David	Zoll	djzoll@locklaw.com	Lockridge Grindal Nauen PLLP	100 Washington Ave S Ste 2200  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

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Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street  Haskell, OK 74436	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118  Deer River, Minnesota 56636	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	4748 Wisconsin Ave NW  Washington, DC 20016	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Peter	Erlinder	proferlinder@gmail.com	International Humanitarian Law Institute	325 Cedar St. Suite 308 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
John R.	Gasele	kgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	150 S Fifth St Ste 2300  Minneapolis, MN 54002	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Jon	Godfread	Jon@ndchamber.com	Greater North Dakota Chamber	2000 Schafer Street  Bismarck, ND 58501	Electronic Service	No	OFF_SL_13-474_Official Service List - CC

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Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620  Saint Paul, Minnesota 55164-0620	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Helene	Herauf	Laney@ndchamber.com	Greater North Dakota Chamber	PO Box 2639  Bismarck, ND 58502	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street  St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Rachel	Kitze Collins	rakitzecollins@locklaw.com	Lockridge Grindeal Nauen PLLP	100 Washington Ave S Suite 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 55164-0620	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Brian	Meloy	brian.meloy@stinson.com	Stinson, Leonard, Street LLP	150 S 5th St Ste 2300  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418  White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road  St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_13-474_Official Service List - CC

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Neil	Roesler	nroesler@vogellaw.com	Vogel Law Firm	218 NP Avenue PO Box 1389 Fargo, ND 58107	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Eileen	Shore	eileenshore@outlook.com	Eileen Shore	3137 42nd Ave So  Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583  Park Rapids, MN 56470	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Byron E.	Starns	byron.starns@stinson.com	Stinson Leonard Street LLP	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Randy V.	Thompson	rthompson@nmtlaw.com	Nolan, Thompson & Leighton	5001 American Blvd W Ste 595  Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Gerald	Von Korff	jvonkorff@rinkenoonan.com	Rinke Noonan	PO Box 1497  St. Cloud, MN 56302	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 710  St. Paul, MN 55102	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309  Duluth, MN 55802	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC

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Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_14-916_Official
Kenneth	Barker	kenneth.barker@centurylink.com	Centurylink Communications, LLC	100 CenturyLink Drive  Monroe, LA 71203	Electronic Service	No	OFF_SL_14-916_Official
Richard	Beatty	rjb1946@aol.com		19281 530th Lane  McGregor, MN 55760	Electronic Service	No	OFF_SL_14-916_Official
Sarah	Beimers	sarah.beimers@mnhs.org	Minnesota Historical Society	345 Kellogg Boulevard West  St. Paul, MN 55102	Electronic Service	No	OFF_SL_14-916_Official
Paul	Blackburn	paul@paulblackburn.net		PO Box 17234  Minneapolis, MN 55417	Electronic Service	No	OFF_SL_14-916_Official
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_14-916_Official
Army	Corp of Engineers	N/A	Army Corps of Engineers	180 5th St E Ste 700  Saint Paul, MN 55101	Paper Service	No	OFF_SL_14-916_Official
Rebecca	Cramer	rebacramer@gmail.com		2916 E Lake St  Minneapolis, MN 55406	Electronic Service	No	OFF_SL_14-916_Official
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_14-916_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_14-916_Official



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kate	Frantz	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_14-916_Official
John R.	Gasele	kgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_14-916_Official
Travis	Germundson	travis.germundson@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_14-916_Official
Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620  Saint Paul, Minnesota 55164-0620	Electronic Service	Yes	OFF_SL_14-916_Official
Doug	Hayes	doug.hayes@sierraclub.org	Sierra Club	85 2nd St., 2nd Fl  San Francisco, CA 94105	Electronic Service	No	OFF_SL_14-916_Official
Gary	Hill	hillx001@umn.edu		50569 218th Pl  McGregor, MN 55760	Electronic Service	No	OFF_SL_14-916_Official
Janet	Hill	janethillnew@gmail.com		50569 218th Pl  Mcgregor, MN 55760-5592	Electronic Service	No	OFF_SL_14-916_Official
Terry	Hokenson	terryhokn@visi.com		3352 Prospect Ter SE  Minneapolis, MN 55414	Electronic Service	No	OFF_SL_14-916_Official
Kathleen	Hollander	kath77holl77@gmail.com		3824 Edmund Blvd  Minneapolis, MN 55406	Electronic Service	No	OFF_SL_14-916_Official
John	Hottinger	N/A		14 Irvine Park Unit 14A  St. Paul, MN 55102	Paper Service	No	OFF_SL_14-916_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-916_Official
Arshia	Javaherian	arshia.javaherian@enbridge.com	Enbridge Energy	26 East Superior Street Suite 309 Duluth, MN 55802	Electronic Service	No	OFF_SL_14-916_Official
Susu	Jeffrey	susujeffrey@msn.com	Friends of Coldwater	1063 Antoinette Ave  Minneapolis, MN 55405	Electronic Service	No	OFF_SL_14-916_Official
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street  St. Paul, MN 551012134	Electronic Service	No	OFF_SL_14-916_Official
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500  St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-916_Official
Kathy	LaBerge	labergeonthelake@yahoo.com		50597 Long Pt Pl  McGregor, MN 55760	Electronic Service	No	OFF_SL_14-916_Official
Winona	LaDuke	winonaladuke1@gmail.com	Honor the Earth	607 Main Avenue  Callaway, MN 56521	Electronic Service	No	OFF_SL_14-916_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_14-916_Official
Otto Edwin	Lueck	N/A		18719 US Hwy 2  Warba, MN 55793	Paper Service	No	OFF_SL_14-916_Official
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-916_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Willis	Mattison	mattison@arvig.net	Friends of the Headwaters and self	POB 583  Park Rapids, MN 56470	Electronic Service	No	OFF_SL_14-916_Official
Jessica	Miller	Jessica.Miller@whiteearthnsn.gov	White Earth Band of Ojibwe	P.O. Box 238  White Earth, MN 56591	Electronic Service	No	OFF_SL_14-916_Official
Debra	Moynihan	debra.moynihan@state.mn.us	MN Department of Transportation	395 John Ireland Blvd MS 620  St. Paul, MN 55155-1899	Electronic Service	No	OFF_SL_14-916_Official
John	Munter	mumooatthefarm@yahoo.com		14860 Bruce Crk Rd  Warba, MN 55793	Electronic Service	No	OFF_SL_14-916_Official
Barbara L.	Neilson	Barbara.Neilson@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 551640620	Electronic Service	Yes	OFF_SL_14-916_Official
Zoe	Nicholie	N/A		4140 Grand Ave S  Minneapolis, MN 55409	Paper Service	No	OFF_SL_14-916_Official
Ann	O'Reilly	ann.oreilly@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-916_Official
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N  Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_14-916_Official
Andrew	Pearson	stopthewar24@gmail.com		2629 18th Ave S Apt 2 Minneapolis, MN 55407	Electronic Service	No	OFF_SL_14-916_Official
Alice	Peterson	N/A		24153 300th St NW  Argyle, MN 56713	Paper Service	No	OFF_SL_14-916_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jesse	Peterson	N/A		2011 East Second St  Duluth, MN 55812	Paper Service	No	OFF_SL_14-916_Official
Abbie	Plouff	abbie.plouff@gmail.com		308 E Prince St Apt 522 St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-916_Official
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418  White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_14-916_Official
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road  St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_14-916_Official
Tammy	Pust	Tammy.Pust@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 55164-0620	Electronic Service	No	OFF_SL_14-916_Official
James W.	Reents	jwreents@gmail.com		4561 Alder Ln NW  Hackensack, MN 56452	Electronic Service	No	OFF_SL_14-916_Official
Steve	Roe	roetreat@crosslake.net		11663 Whitefish Ave  Crosslake, MN 56442	Electronic Service	No	OFF_SL_14-916_Official
Jean	Ross	jfross@umn.edu		3624 Bryant Ave S  Minneapolis, MN 55409	Electronic Service	No	OFF_SL_14-916_Official
Stan	Sattinger	sattinss@aol.com		3933 Twelfth Ave S  Minneapolis, MN 55407	Electronic Service	No	OFF_SL_14-916_Official
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_14-916_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Claudia	Schrull	CLAUDIA.SCHRULL@ENBRIDGE.COM	Enbridge Energy Company, Inc.	Suite 3300 1100 Louisiana Houston, TX 77002	Electronic Service	No	OFF_SL_14-916_Official
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	No	OFF_SL_14-916_Official
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583  Park Rapids, MN 56470	Electronic Service	No	OFF_SL_14-916_Official
Mollie	Smith	msmith@fredlaw.com	Fredrikson Byron PA	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_14-916_Official
Ken	Vraa	N/A		22070 512th Ln  McGregor, MN 55760	Paper Service	No	OFF_SL_14-916_Official
Janice	Vraa	N/A		22070 512th Ln  McGregor, MN 55760	Paper Service	No	OFF_SL_14-916_Official
Tom	Watson	twatson@iphouse.com	Whitefish Area Property Owners Association	39195 Swanburg Court  Pine River, Minnesota 56474	Electronic Service	No	OFF_SL_14-916_Official
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309  Duluth, MN 55802	Electronic Service	No	OFF_SL_14-916_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_14-916_Official
Jonathan	Wolfgram	Jonathan.Wolfgram@state.mn.us	Department of Public Safety	445 Minnesota Street Suite 147  St. Paul, MN 55101-1547	Electronic Service	No	OFF_SL_14-916_Official

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Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_15-137_Official
Kenneth	Barker	kenneth.barker@centurylink.com	Centurylink Communications, LLC	100 CenturyLink Drive  Monroe, LA 71203	Electronic Service	No	OFF_SL_15-137_Official
Sarah	Beimers	sarah.beimers@mnhs.org	Minnesota Historical Society	345 Kellogg Boulevard West  St. Paul, MN 55102	Electronic Service	No	OFF_SL_15-137_Official
Paul	Blackburn	paul@paulblackburn.net		PO Box 17234  Minneapolis, MN 55417	Electronic Service	No	OFF_SL_15-137_Official
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_15-137_Official
Army	Corp of Engineers	N/A	Army Corps of Engineers	180 5th St E Ste 700  Saint Paul, MN 55101	Paper Service	No	OFF_SL_15-137_Official
Randall	Doneen	randall.doneen@state.mn.us	Department of Natural Resources	500 Lafayette Rd, PO Box 25  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_15-137_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_15-137_Official
Kate	Frantz	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_15-137_Official
Travis	Germundson	travis.germundson@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_15-137_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_15-137_Official
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500  St. Paul, MN 55101	Electronic Service	No	OFF_SL_15-137_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_15-137_Official
Jessica	Miller	Jessica.Miller@whiteearthn.sn.gov	White Earth Band of Ojibwe	P.O. Box 238  White Earth, MN 56591	Electronic Service	No	OFF_SL_15-137_Official
Debra	Moynihan	debra.moynihan@state.mn.us	MN Department of Transportation	395 John Ireland Blvd MS 620  St. Paul, MN 55155-1899	Electronic Service	No	OFF_SL_15-137_Official
Ann	O'Reilly	ann.oreilly@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 55101	Electronic Service	No	OFF_SL_15-137_Official
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N  Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_15-137_Official
Alice	Peterson	N/A		24153 300th St NW  Argyle, MN 56713	Paper Service	No	OFF_SL_15-137_Official
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418  White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_15-137_Official
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_15-137_Official

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Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	No	OFF_SL_15-137_Official
Bill	Sierks	bill.sierks@state.mn.us	State of MN - MPCA	520 Lafayette Rd N  St. Paul, MN 55101	Electronic Service	No	OFF_SL_15-137_Official
Mollie	Smith	msmith@fredlaw.com	Fredrikson Byron PA	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_15-137_Official
Sandy	Sterle	ssterle777@gmail.com		2676 County Road 104  Barnum, MN 55707	Electronic Service	No	OFF_SL_15-137_Official
Gerald	Von Korff	jvonkorff@rinkenoonan.com	Rinke Noonan	PO Box 1497  St. Cloud, MN 56302	Paper Service	No	OFF_SL_15-137_Official
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309  Duluth, MN 55802	Electronic Service	No	OFF_SL_15-137_Official
Cam	Winton	cwinton@mnchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_15-137_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_15-137_Official
Jonathan	Wolfgram	Jonathan.Wolfgram@state.mn.us	Department of Public Safety	445 Minnesota Street Suite 147  St. Paul, MN 55101-1547	Electronic Service	No	OFF_SL_15-137_Official



**From:** Sprenger, Matt [mailto:matt\_sprenger@fws.gov]  
**Sent:** Monday, February 22, 2016 7:33 AM  
**To:** pop3.arvig.net  
**Cc:** Renschler, Jason J NWO  
**Subject:** Re: [EXTERNAL] Status of Information Request (UNCLASSIFIED)

Willis,

We have not been contacted by any Minnesota based agencies, state or federal, regarding a coordinated NEPA effort. Additionally, the Fish and Wildlife Service has not made any determinations regarding the extent of interagency coordination because a final special use permit application has not been submitted by Enbridge. I am still hopeful that the final Sandpiper route will avoid impacts to all Fish and Wildlife Service refuge program easement and fee-title interests.

Do not hesitate to give me a call if you have any questions.

Matt Sprenger  
701-662-8611 ext. 328

On Fri, Feb 19, 2016 at 8:19 PM, [pop3.arvig.net](mailto:pop3.arvig.net) <[mattison@arvig.net](mailto:mattison@arvig.net)> wrote:

Hello Jason and Matt,

This a follow up on my December 28, 2015 email to each of you in regard to my interest in coordinated federal environmental review for the Sandpiper Pipeline. As you may be aware, a Minnesota State Appeals Court ruling that was upheld by the State Supreme has ordered state agencies to prepare a full EIS on the Sandpiper Pipeline.

Because NEPA requires coordination of environmental review activities with state and federal agencies and Minnesota's own environmental policy act (MEPA) requires coordination with Federal agencies it would seem obvious that this coordination is not only in order but should probably be well under way.

Therefore, my question now (updated from my December email to reflect the court-ordered EIS in Minnesota) is, has the State of Minnesota (Minnesota Public Utilities Commission (PUC) is the presumptive RGU) or the Minnesota Department of Commerce who plans to prepare the EIS for the PUC entered into any communication with your respective Departments regarding coordinated environmental review?

If not, have your agencies opened or plan to open communications with the MPUC or MDOC to begin state/federal coordination of environmental review? And, if not, could you help me understand why such coordination would not have begun?

Thanks,

Willis Mattison



85 7TH PLACE EAST, SUITE 500  
SAINT PAUL, MINNESOTA 55101-2198  
MN.GOV/COMMERCE  
651.539.1500 FAX: 651.539.1547  
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March 3, 2016

Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101

RE: Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474

Dear Mr. Wolf:

Pursuant to the Commission's January 16, 2016 Order in the above-referenced dockets, the Department of Commerce, Pollution Control Agency and Department of Natural Resources submit the attached Memorandum of Understanding regarding development of Environmental Impact Statements for the proposed Sandpiper and Line 3 Replacement pipeline projects, dated March 2, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "W Grant", is written over the word "Sincerely,".

William Grant  
Deputy Commissioner

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE MINNESOTA DEPARTMENT OF COMMERCE**

**AND**

**THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES AND THE**  
**MINNESOTA POLLUTION CONTROL AGENCY**

**REGARDING**

**DEVELOPMENT OF ENVIRONMENTAL IMPACT STATEMENTS**  
**FOR THE**

**SANDPIPER AND LINE 3 REPLACEMENT PIPELINE PROJECTS**

This Memorandum of Understanding (MOU) between the Minnesota Department of Commerce (Commerce or Lead Agency) and the Minnesota Department of Natural Resources (MnDNR) and Minnesota Pollution Control Agency (MPCA) (collectively referred to as the Agencies) defines the roles and responsibilities of Commerce, the MnDNR and MPCA (Assisting Agencies) regarding the development of the necessary environmental review documents, including Environmental Impact Statements (EISs), for the proposed Sandpiper and Line 3 Replacement pipeline projects (Proposed Projects).

**I. COMMISSION RESPONSIBILITIES**

The Minnesota Public Utilities Commission (Commission) is the Responsible Governmental Unit (RGU) for the environmental review of the Proposed Projects. In that capacity, the Commission will make all final decisions regarding the scope and adequacy of the EISs for both of the Proposed Projects.

**II. COMMERCE SCOPE OF WORK AND RESPONSIBILITIES**

Pursuant to the Commission's January 11, 2016 Order, Commerce shall serve as Lead Agency for the development of the relevant environmental review documents for both of the Proposed Projects and administer the development of the Sandpiper EIS and the Line 3 EIS pursuant to the requirements set forth in the Minnesota Environmental Policy Act (MEPA), Minn. Stat. Ch. 116D, and Minnesota Rules Ch. 4410.

**III. MnDNR AND MPCA SCOPE OF WORK AND RESPONSIBILITIES**

The MnDNR and MPCA, as Assisting Agencies, shall assist the Lead Agency in identifying issues, alternatives, routes and alternative route proposals, data, and analysis to address environmental review topics and requirements and help Commerce ensure that each EIS fulfills applicable MEPA requirements; review, assess and comment on data and analysis in environmental documents prepared during the environment review process; address any potential deficiencies in environmental review documents in a timely manner to allow the deficiencies to be addressed as early as possible in the environmental review process; review and provide comments on

environmental review documents prepared for either of the Proposed Projects; and provide such other assistance as the Lead Agency and the Assisting Agencies mutually agree are necessary for MEPA compliance.

#### IV. AGENCY RESOURCES

1. The Assisting Agencies agree to use best efforts to provide the staffing resources necessary to accomplish the purpose of this MOU. Specific staffing needs to accomplish the purpose of this MOU will be identified in a separate interagency funding agreement that designates the specific Assisting Agency staff assigned, their general scope of duties, and maximum total funding to be provided.

2. It is understood by the Lead Agency and the Assisting Agencies that the Lead Agency will enter into a separate arrangement with the Project Proposer(s) to cover the cost of environmental review for both Proposed Projects pursuant to Minn. Stat. § 116D.045 and Minn. R. 4410.6000 through 4410.6500. Costs assessed to the Project Proposer(s) shall include the costs necessary to reimburse the Assisting Agencies for all costs incurred by the Assisting Agencies in accomplishing the purpose of this MOU.

3. All obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources for the work undertaken by the Agencies to accomplish the MOU's purpose and allocation of responsibilities.

#### V. GENERAL PROVISIONS

1. Agency Designees: The Agencies agree to designate personnel as the Agency designee with primary responsibility for implementing the terms of this agreement.

The Agencies' designees are, hereby, authorized to develop procedures and agreed timelines necessary to accomplish the purpose of this MOU.

2. Data Practices. The Lead Agency and Assisting Agencies agree to coordinate compliance with the requirements of the Minnesota Government Data Practices Act (MGDPA) as it pertains to the data collected or used to accomplish the purpose of this MOU.

3. Amendments. This MOU may be amended only by written agreement of all parties.

4. Termination. This MOU will remain in effect until issuance of the Commission's determination of EIS adequacy for both of the Proposed Projects. Notwithstanding the forgoing, any party may withdraw from this MOU upon written notice to the other signatories to this MOU.

5. Liability. Each party to this MOU shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Nothing in this MOU shall be deemed to be a waiver by any of the parties of any applicable state immunities or limits of liability.

6. Effective Date. This MOU will be effective upon execution by all parties hereto.

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE AUTHORITY TO COMMIT TO THIS MOU ON BEHALF OF THE PARTY THAT THEY REPRESENT.

**Minnesota Department of Commerce**

By: 

Print Title/Name: Deputy Commissioner, William Grant

Date: 3-2-16

**Minnesota Pollution Control Agency**

By: 

Print Title/Name: Deputy Commissioner / Michelle Beeman

Date: 3/2/16

**Minnesota Department of Natural Resources**

By: 

Print Title/Name: Assistant Commissioner Barbara L. Naramore

Date: 3/2/16

May 30, 2014

**VIA E-FILING**

Larry Hartman, Environmental Review Manager  
Minnesota Department of Commerce  
85 7th Place E, Suite 500  
St. Paul, MN 55101

RE: *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259)

Dear Mr. Hartman:

North Dakota Pipeline Company LLC (“NDPC”) submits this letter to propose route alternatives for Sandpiper Pipeline Project (“Project”), as well as to provide comments regarding proposed route alternatives filed with the Minnesota Public Utilities Commission (“Commission”) during the public comment period. In the sections that follow, NDPC discusses: (1) proposed route alternatives it has incorporated into its preferred route, which should be included in the Comparative Environmental Analysis (“CEA”) prepared for the Project; (2) proposed alternatives that do not meet the Project’s purpose and, therefore, should not be included in the CEA; and (3) the feasibility of certain proposed route alternatives. With respect to any proposed route alternatives not addressed in these comments, NDPC takes no position on whether the Commission and the Department of Commerce, Energy Environmental Review and Analysis (“EERA”), should include those alternatives in the CEA.

In addition, as requested by the EERA, NDPC provides updated information regarding cumulative potential effects of the proposed Project and Enbridge Energy, Limited Partnership’s (“Enbridge”) proposed Line 3 Replacement Program (“L3R Project”).

**A. Proposed Route Alternatives NDPC Incorporated Into the Preferred Route, Which Should Be Included in the CEA.**

On April 4, 2014, NDPC submitted thirteen route alternatives that it had incorporated into its preferred route for the Project (*see* the attached **Exhibit A**). NDPC has identified an additional eleven route alternatives that address landowner, environmental, engineering, design, or constructability concerns, and has incorporated these additional route alternatives into its preferred route. The alternatives are consistent with the Project’s purpose, are feasible from an engineering, design, and constructability standpoint, and have similar or fewer environmental impacts. The attached **Exhibit B** provides a description of each of the eleven route alternatives,

the reasons for incorporation into the preferred route, and a map depicting each alternative's location.

NDPC respectfully requests that the preferred route submitted on January 31, 2014, as modified by the route alternatives provided in its April 4, 2014, filing (*see Exhibit A*), and in this filing (*see Exhibit B*),<sup>1</sup> be included in the CEA, addressed at the public hearings as NDPC's preferred route, and ultimately approved as the Project route. A CD containing shapefiles of the preferred route (as modified), as well as shapefiles of each of the route alternatives, has been sent under separate cover.

**B. Proposed Route Alternatives That Do Not Meet the Project's Purpose and, Therefore, Should Be Excluded From the CEA.**

Certain route alternatives proposed in public comments do not meet the Project's purpose and, therefore, should not be addressed in the CEA. Each of these proposed route alternatives is discussed below.

1. North Dakota to Twin Cities Route Alternatives.

Friends of the Headwaters proposed a route alternative (referred to by Friends of the Headwaters as Alternative Route "C") that would extend from North Dakota into Minnesota along MN Hwy 9, then intersect with and follow first an existing Magellan Pipeline Company pipeline and then the existing MinnCan Pipeline, ultimately terminating at the Flint Hills and Saint Paul Park Refineries, south of the Minneapolis/St. Paul metro area.<sup>2</sup> Similar proposals were included in other public comments, including a route alternative that would follow I-94 from North Dakota to terminate at an unknown location in the Minneapolis/St. Paul area.<sup>3</sup> Such proposals do not reach the Project's designated connecting points and, thus, do not meet the Project's intended purpose.

The Project's purpose is to transport the growing supplies of oil produced in North Dakota to existing terminals at Clearbrook, Minnesota, and Superior, Wisconsin, within the

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<sup>1</sup> Please note that the Peterson Lake Route Alternative in this filing replaces the Blind Lake Creek Route Alternative submitted on April 4, 2014.

<sup>2</sup> See Friends of the Headwaters Public Comments, dated April 4, 2014, filed by DOC EERA on April 21, 2014 (Doc. IDs 20144-98540-05, 20144-98540-06 and 20144-98540-07), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

<sup>3</sup> See, e.g., Monicken Public Comments, dated April 4, 2014, and Mosner Public Comments, dated April 4, 2014, filed by the EERA on April 17, 2014 (MPUC Doc. ID 20144-98433-08), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259); see also Honor the Earth's Motion for Alternative Sandpiper Route 29-94, filed by Honor the Earth on April 4, 2014 (MPUC Doc. ID 20144-97984-01), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).



Enbridge Pipeline System.<sup>4</sup> From these two terminals, crude oil can be shipped on other pipelines and delivered to not only refineries located in Minnesota, but also to other states in the Midwest and on the East Coast.<sup>5</sup> Extending the Project from North Dakota to the Clearbrook and Superior terminals enables NDPC to utilize existing facilities within the Enbridge Pipeline System, and to meet its shipper obligations. Utilizing the Clearbrook and proposed Clearbrook West terminals allows NDPC to provide back-up service to the existing Line 81 Pipeline deliveries, which in turn ensures reliable deliveries of 60,000 barrels per day (“bpd”) annual capacity into the Minnesota Pipe Line Company system for delivery to Minnesota refineries.<sup>6</sup> However, as noted, the Project’s purpose goes beyond delivery to only Minnesota refineries, and for that reason connecting to both the Clearbrook and proposed Clearbrook West terminals along with the existing Superior terminal is essential to meeting this purpose.

In essence, the proponents of a North Dakota to Twin Cities route alternatives propose a *different project*, rather than an alternative route for the proposed Project.<sup>7</sup> Therefore, NDPC requests that the Commission and the EERA not include route alternatives extending from North Dakota to the Twin Cities in the CEA.

## 2. North Dakota to Illinois Route Alternatives.

Friends of the Headwaters also suggest two route alternatives (referred to by Friends of the Headwaters as Alternative “A” and Alternative “B”), which extend from North Dakota to Illinois, passing through southwestern Minnesota.<sup>8</sup> Similar routes were proposed in other public comments.<sup>9</sup> These proposals do not reach either of the Project’s designated connecting points

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<sup>4</sup> See Section 7852.2100(D)(2) of NDPC’s Pipeline Route Permit Application (“Application”), filed on November 8, 2013 (MPUC Doc. ID 201311-93532-03), as supplemented on January 31, 2014 (MPUC Doc. ID 20141-96101-01), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259), at pp. 4-5.

<sup>5</sup> *Id.*

<sup>6</sup> See Section 7852.2100(D)(5) of NDPC’s Application, filed on November 8, 2013 (MPUC Doc. ID 201311-93532-03), as supplemented on January 31, 2014 (MPUC Doc. ID 20141-96101-01), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259), at p. 5.

<sup>7</sup> The proposals also do not contain all of the data and analysis required for route alternatives. See Minn. R. 7852.1400, subp. 3(B) and Minn. R. 7852.2700.

<sup>8</sup> See Friends of the Headwaters Public Comments, dated April 4, 2014, filed by DOC EERA on April 21, 2014 (Doc. IDs 20144-98540-05, 20144-98540-06 and 20144-98540-07), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

<sup>9</sup> See, e.g., Mosner Public Comments, dated April 4, 2014, filed by the EERA on April 17, 2014 (MPUC Doc. ID 20144-98433-08), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

and, thus, do not meet the Project's intended purpose. These are proposals for *different projects*, not alternative routes, much like the North Dakota to Twin Cities route alternatives discussed above.<sup>10</sup> Thus, for the same reasons discussed in Section B.1, NDPC requests that the Commission and EERA not include route alternatives extending from North Dakota to Illinois in the CEA.

### 3. Northern Minnesota Route Alternatives.

Two route alternatives extending north of and around the Red Lake Indian Reservation were proposed in public comments. One route alternative was proposed by Sharon Natzel,<sup>11</sup> and the other is a conceptual route proposed by Ronald Vegemast.<sup>12</sup>

Neither proposed alternative connects to Enbridge's existing terminal in Clearwater, Minnesota, which, as discussed above, is a designated connecting point for the Project and essential to meeting the Project's purpose.<sup>13</sup> Therefore, NDPC requests that the Commission and the EERA not include these alternatives in the CEA.

### C. Comments on Route Alternative Feasibility.

Two route alternatives have been proposed in areas where NDPC has no legal authority or recourse to obtain rights to construct the Project. Several public comments suggested that NDPC follow the Northern Route Alternative<sup>14</sup> discussed in NDPC's pipeline route permit

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<sup>10</sup> The proposals also do not contain all of the data and analysis required for route alternatives. See Minn. R. 7852.1400, subp. 3(B) and Minn. R. 7852.2700.

<sup>11</sup> See Natzel Public Comments, dated April 3, 2014, filed by DOC EERA on April 17, 2014 (MPUC Doc. ID 20144-98436-02), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

<sup>12</sup> See Vegemast Public Comments, dated April 3, 2014, filed by DOC EERA on April 17, 2014 (MPUC Doc. ID 20144-98436-10), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

<sup>13</sup> The proposals also do not contain all of the data and analysis required for route alternatives. See Minn. R. 7852.1400, subp. 3(B) and Minn. R. 7852.2700.

<sup>14</sup> See, e.g., Sterle Public Comments, filed by DOC EERA on March 24, 2014 (MPUC Doc. ID 20143-97538-02), Carlton County Land Stewards Public Comments, dated April 3, 2014, filed by DOC EERA on April 21, 2014 (MPUC Doc. ID 20144-98540-03), Shulstrom Public Comments, dated April 3, 2014, filed by DOC EERA on April 7, 2014 (MPUC Doc. ID 20144-98036-01), Rasch Public Comments, dated March 3, 2014, filed by DOC EERA on April 17, 2014 (MPUC Doc. ID 20144-98436-04), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

application (“Application”)<sup>15</sup> and accompanying Environmental Information Report (“EIR”).<sup>16</sup> Others suggested that the Project route follow the Soo Line ATV Trail, which extends from Cass Lake, Minnesota, to Moose Lake, Minnesota.<sup>17</sup> NDPC understands that both route alternatives will be studied in the CEA. NDPC takes no position on their inclusion in the CEA, but notes that both alternatives cross the Leech Lake Indian Reservation, where Enbridge cannot construct the Project.<sup>18</sup>

**D. Updated Information Regarding Cumulative Potential Effects.**

On March 3, 2014, Enbridge announced that it had received shipper support for the L3R Project to replace the existing 34-inch Line 3 Pipeline along most of its route from Edmonton, Alberta, to Superior, Wisconsin, with a new 36-inch pipeline and associated facilities. Within the United States, Enbridge plans to replace three segments of the Line 3 Pipeline as three separate replacement projects: (1) the Canadian border to Joliette, North Dakota, segment; (2) the Joliette, North Dakota, to the Wisconsin border segment; and (3) the Wisconsin border to the Superior terminal segment. Enbridge proposes to route the Clearbrook, Minnesota, to Wisconsin border portion of the second segment of the Line 3 Pipeline along the preferred route for the Sandpiper Pipeline.<sup>19</sup> In general, Enbridge plans to locate the Line 3 Pipeline 25 feet from the Sandpiper Pipeline. Enbridge plans to file Certificate of Need and Pipeline Route Permit applications for the Minnesota portion of the LR3 Project with the Commission in 2015. Pending receipt of all necessary permits and approvals, construction of the LR3 Project is anticipated to commence in late 2016, with an in-service date in late 2017.

In light of Enbridge’s recent announcement regarding the L3R Project, the EERA requested that NDPC provide updated information regarding the cumulative potential effects of the Sandpiper Pipeline Project and the LR3 Project.<sup>20</sup> As noted in its Application, as a general matter, NDPC has routed the Sandpiper Pipeline to facilitate construction of future projects, such

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<sup>15</sup> NDPC’s Application, filed on November 8, 2013 (MPUC Doc. ID 201311-93532-03), as supplemented on January 31, 2014 (MPUC Doc. ID 20141-96101-01), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

<sup>16</sup> Environmental Information Report (“EIR”), filed by NDPC on November 8, 2013 (MPUC Doc. ID 201311-93532-04), as supplemented on January 31, 2014 (MPUC Doc. ID 20141-96101-02), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259).

<sup>17</sup> See Sterle and Carlton County Land Stewards Public Comments, *supra*, note 14.

<sup>18</sup> See Letter from Steven Howard, Executive Director for the Leech Lake Band of Ojibwe to Tracy Smetana, MPUC, October 25, 2013, attached as **Exhibit C**.

<sup>19</sup> NDPC’s preferred route includes the route alternatives incorporated by NDPC in its April 4, 2014 filing and this filing.

<sup>20</sup> See Minn. R. 7852.1900, subp. 3(I); *see also* Minn. R. 7852.2700.

as the L3R Project, as co-located facilities with the Sandpiper Pipeline right-of-way.<sup>21</sup> Cumulative environmental impacts of L3R Project construction will be reduced by utilizing the work space created for the Sandpiper Pipeline, to the extent practicable. With respect to specific data regarding cumulative potential effects of the two projects, the attached **Exhibit D** provides updates to the Tables in the EIR<sup>22</sup> showing the potential additive impacts of the L3R Project. Only those Tables that required updating to account for cumulative potential effects of the L3R Project and the Sandpiper Pipeline are provided in **Exhibit D**, and any Tables not included in this update remain as filed on January 31, 2014.

Since Enbridge plans to co-locate the Line 3 Pipeline along the same route as the Sandpiper Pipeline, the cumulative potential effects of the two projects should be analyzed not only for NDPC's preferred route, but also for each route alternative included in the CEA and addressed at the public hearings. Such an analysis is necessary to ensure an accurate comparison of NDPC's preferred route to any route alternatives.

Should the Commission or the EERA have questions regarding this filing, please contact Jonathan Minton at (713) 821-2000.

Sincerely,



Barry Simonson  
Senior Manager  
North Dakota Pipeline Company LLC

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<sup>21</sup> See Section 7852.2700(I) of NDPC's Application, filed on November 8, 2013 (MPUC Doc. ID 201311-93532-03), as supplemented on January 31, 2014 (MPUC Doc. ID 20141-96101-01), *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project*, MPUC Docket No. PL-6668/PPL-13-474 (OAH Docket No. 8-2500-31259), at pp. 12 and 11, respectively.

<sup>22</sup> EIR, *supra*, note 16.

April 4, 2014

Larry Hartman, Environmental Review Manager  
Energy Environmental Review and Analysis (EERA)  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul MN 55101

Email: [larry.hartman@state.mn.us](mailto:larry.hartman@state.mn.us)

Re: PUC Docket Number 13-473 and 13-474

Dear Mr. Hartman,

Please consider the comments below the collective and cumulative concerns and recommendation of Friends of the Headwaters (FOH), a local citizen's group organized for the purpose of protecting Minnesota's resources; advocating for citizen's right to fully participate in its government's decisions and ensuring adherence to all local, state and federal laws in all actions taken in regard to Enbridge Pipeline, (now dba North Dakota Pipeline LLC) and their plans to construct and operate the Sandpiper Crude Oil Pipeline in Minnesota. Friends of the Mississippi have over 600 members and supporters who share the concerns, comments and recommendations expressed below.

We have organized our comments into twelve sections under the following broad categories:

1. Concerns, objections, and failure to provide due process;
2. Quality and scope of alternative environmental reviews;
3. Certain time and resource constraints;
4. Unjustified limited scope of environmental review;
5. Pipeline leak/rupture event impact scenario analysis;
6. Need for additional leak/rupture scenarios unique to sandpiper routes;
7. Bakken sweet crude oil volatility/flammability consideration in leak/rupture scenario development;
8. Dept. of Commerce staff commitment to provide FOE assistance in development of alternative route data;
9. Methods of developing and comparing alternative routes;
10. Cumulative impacts;
11. Financial assurance;
12. Transparency, equal access and equal treatment;

### **1. CONCERNS, OBJECTIONS, AND FAILURE TO PROVIDE DUE PROCESS**

Our primary concern is for what appears to be a decoupling and therefore the confusion of the procedures employed by your Department and the Public Utilities Commission in performing the state's responsibilities under the provisions of the various Statutes and Administrative Rules pertaining specifically to both the need for and the routing of petroleum pipelines in Minnesota.

The effect of the apparent decoupling of the Certificate of Need and Routing permit is the perception if not the reality that the applicant's realization of the pipeline project is but a foregone conclusion and that the routing process is relegated to simply comparing the applicant's preferred route to any other route that can possibly manage to clear the myriad regulatory hurdles of requirements for complex supporting data and survive the virtually insurmountable maze of procedural requirements. The process has the appearance of being so favorably stacked in favor of the applicant's preferred route as to discourage the public from mounting the effort necessary to have any other route qualify for serious consideration. In fact, the applicant is acting in ways that would readily lead even the most casual observer to believe that the proposed southern route for the Sandpiper pipeline is a "done deal". Why else would Enbridge representatives gamble so much money to secure landowner easements all along their "preferred" route were they not so confident that the "process" will work in their favor?

FOH is requesting affirmative action on the part of the DOC and PUC that demonstrate that the need and associated pipeline routing process are transparent avoiding even the appearance of a process with a pre-determined outcome. The public has a right to expect a meticulously developed, well coordinated and interrelated need and routing process such that all material evidence is adequately weighed and publically well reasoned throughout.

It is very unclear and disturbing to the public that serious social, economic and environmental considerations seem so narrowly defined and constrained by unreasonable time schedules that favor the applicant at the expense of the public interest. It is unclear who develops the environmental impact information required by rule in the Certificate of Need (CON) process and how this environmental information may differ from the "comparative environmental analysis" or CEA prepared by the DOC that has the appearance of being operative only in the pipeline routing process. It is unclear and somewhat disturbing to realize, if it is true, that the narrow constraints imposed on the CEA document may also constrain the quality of the only environmental decision document available for the parallel but still separate CON process.

Furthermore, FOH is particularly concerned for your Department's actions which may violate the Minnesota Environmental Policy Act (MEPA) in the preparation of the CEA, particularly if the CEA is the only environmental review document made available for the CON decision as well.

It is our belief that while the several recent amendments to Minnesota Statutes you have cited at recent public meetings regarding the Sandpiper project provide for an "alternative" environmental review process for pipelines these Statutes and Rules do not allow for "inferior" environmental review for either the CON or the CEA developed for the Routing Permit.

Our reviews of all pertinent Minnesota Statutes and Rules applicable to the either the determinations of need and/or for the selection of routes for crude oil pipelines find

nothing that absolves the applicant or any state agencies from adherence to either the letter or the spirit of certain overarching and vital policy provisions of MEPA. For example, we believe that the applicant and your respective departments as well as commenting state agencies are bound by Subdivision 6, Minnesota Statutes 116D.04 regarding which states:

**Prohibitions.** No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

This provision of MEPA sets a very high standard for making a finding that all “reasonable and prudent alternatives” have indeed been considered before any state action may be taken to permit projects such as a crude oil pipeline.

## **2. QUALITY AND SCOPE OF ALTERNATIVE ENVIRONMENTAL REVIEW**

FOH recognizes that the Departments of Commerce and/or the Public Utilities Commission are empowered by certain Statutes to utilize alternative environmental review for certain crude oil pipelines as authorized by Minnesota Statutes 216G.02 pertaining to Routing of Certain Pipelines and Minnesota Statutes 2004, section 216B.2421 that applies to certain large energy facilities and specifically, subdivision 2, subsection 4. specifies that these provisions apply to pipelines such as the Sandpiper.

FOH further recognizes that Minnesota Statutes 2004, section 216B.2421, Subdivision 5 describing environmental review goes on to state:

[ENVIRONMENTAL REVIEW.] For the projects identified in subdivision 2 and following these procedures, the commissioner of the Department of Commerce shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project.

However, while MEPA specifically, in Subdivision 4a. makes provisions for such forms of exclusive “alternative review” as allowed in Statutes 216B, this section of MEPA also makes the intentions of such alternative review quite clear.

Subd. 4a. Alternative review. The board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.

FOH brings your attention to the fact that while the purpose of “alternative review” as contemplated under Subdivision 4a of MEPA is to allow for “a more timely or more efficient manner to be utilized in lieu of an environmental impact statement, such alternative review is also required to: ...“address the same issues and utilize similar procedures as an environmental impact statement...”

### **3. CERTAIN TIME AND RESOURCE CONSTRAINTS**

The expedited time schedules and the omission of certain requirements for publishing of drafts documents and for soliciting public and other agency comments on draft documents are all streamlining of the normal EIS process provided as special privilege for pipelines under MN Statutes 216 G.02. The compression of time-lines and reduction of time and limiting opportunity for public or other agency comments does not excuse the PUC and/or the DOC from preparing robust, thorough and complete environmental review documents for pipelines. If the compressed nine and twelve month schedules provided for in rule and law, respectively for both issuing Certificates of Need (CON) and Routing Permits place constraints on the quality or completeness of the public involvement or the quality and completeness of environmental review portions of these processes it is incumbent on the PUC and DOC to either act to secure the necessary resources to accomplish these tasks within the provided timeframes or grant itself sufficient time extensions to perform the environmental review adequately. Your individual departments have ample provision in rule and law to shift the costs of the accelerated public input and environmental review to the applicant as their responsibility in return for the benefits of the streamlined process.

Specifically, in regard to cost constraints, Minnesota Statutes 216G.02 ROUTING OF CERTAIN PIPELINES. Subdivision 3.B Section 6 requires the PUC to:

(Section 6) provide for the payment of fees by persons proposing to construct pipelines to cover the costs of the commission in implementing this section;

Lacking sufficient resources your departments have little choice, if acting in the better interest of the public than to request additional funding and/or extend the time taken to properly meet these obligations to the citizens of Minnesota.

It is FOH’s understanding of these Statutes and Rules that if at any time during CON or Routing Permit process your respective departments become aware that more extensive public involvement will be needed, or that more detailed information must be analyzed or



that more alternative routes than anticipated will have to be evaluated to meet the minimum requirements of MEPA or other applicable rules the Public Utilities Commission on recommendation from the Department of Commerce, in providing such just cause, can extend either of the CON or the Routing Permit schedules. Specifically PUC procedural rules in Section 5 states:

“(Section 5) provide a procedure that the commission will follow in issuing pipeline routing permits and require the commission to issue the permits within nine months after the permit application is received by the commission, unless the commission extends this deadline for cause;” (emphasis added by FOH)

FOH contends that citizen comments have by appropriate mean requested, sufficiently justified and provided evidence in support to constitute the required “cause” for the commission to extend the several deadlines necessary to allow full and complete public involvement and for expanding the time and resources necessary for preparation of appropriate environmental review documents.

#### **4. UNJUSTIFIED LIMITED SCOPE OF ENVIRONMENTAL REVIEW**

FOH finds that the Department of Commerce Environmental Review staff may believe that the Comparative Environmental Analysis for alternative routes and comments from any state or federal agencies or from the general public are necessarily constrained to impacts of pipeline construction only. FOH point out that under PUC Rules 7852.1900 CRITERIA FOR PIPELINE ROUTE SELECTION states in Subpart. 3 Criteria and in section J:

Criteria. In selecting a route for designation and issuance of a pipeline routing permit, the commission shall consider the impact on the pipeline of the following:

J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section [299J.05](#), relating to the location, design, construction, or **operation** of the proposed pipeline and associated facilities. (note: bold underlining added by FOH)

Therefore, FOH requests that the Comparative Environmental Review for the preferred route and all alternative routes include all *operational* impacts of the proposed Sandpiper pipeline. Operational aspects of crude oil pipelines over their entire projected life history include the high potential for pipeline failure, rupture, leaks and other releases of product into the environment. Probabilities of these types of releases have been found in other recent pipeline project environmental reviews to be high enough to be considered reasonably predictable impacts of operating crude oil pipelines over their projected lifetimes. These were the findings of a recently published 2014 Federal Environmental Impact Statement (EIS) prepared by the U.S. Environmental Protection Agency (EPA) for the proposed Pebble Mine in Bristol Bay Alaska. The full EIS is available on line at:

<http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=253500#Download>

In Chapter 11 of the aforementioned EIS the EPA supports this conclusion by statistical analysis of United States, Canadian pipeline operating history as well as data from other countries: The EPA's rather sobering and significant conclusions are shown in two excerpts from the EIS below:

*“This overall estimate of annual failure probability, coupled with the 113-km length of each pipeline as it runs along the transportation corridor within the Kvichak River watershed, results in an 11% probability of a failure in each of the four pipelines each year. Thus, the probability of a pipeline failure occurring over the duration of the Pebble 2.0 scenario (i.e., approximately 25 years) would be 95% for each pipeline.”*

*“The chance of a large rupture in each of the three pipelines over the life of the mine would exceed 25%, 30%, and 67% in the Pebble 0.25, 2.0, and 6.5 scenarios, respectively. In each of the three scenarios, there would be a greater than 99.9% chance that at least one of the three pipelines carrying liquid would fail during the project lifetime”.*

The Bristol Bay EIS goes on to discount the likelihood that improved engineering standards for pipeline materials would reduce pipeline failure rates because engineering has little effect on the rate of human errors leading to leaks and ruptures. See this discussion in a following paragraph:

*“It may be argued that engineering can reduce pipeline failures rates below historical levels, but improved engineering has little effect on the rate of human errors. Many pipeline failures, such as the cyanide water spill at the Fort Knox mine (Fairbanks, Alaska) that resulted from a bulldozer ripper blade hitting the pipeline (ADEC 2012), are due to human errors. Perhaps more important, human error can negate safety systems. For example, on July 25 and 26, 2010, crude oil spilled into the Kalamazoo River, Michigan, from a pipeline operated by Enbridge Energy. A series of in-line inspections had showed multiple corrosion and crack-like anomalies at the river crossing, but no field inspection was performed (Barrett 2012). When the pipeline failed, more than 3 million L (20,000 barrels) of oil spilled over 2 days as operators repeatedly overrode the shut-down system and restarted the line (Barrett 2012). The spill was finally reported by a local gas company employee who happened to witness the leak. The spill may have been prevented if repairs had been made when defects were detected, and the release could have been minimized if operators had promptly shut down the line”.*

The following January 27, 2012 article in the Watershed Sentinel, an online British Columbian Newsletter reviews a 10- year spill history of the Enbridge Pipeline System in the U.S. and Canada demonstrating that Enbridge pipeline leak/spill history is consistent with the data analyzed in the Bristol Bay EIS.

## A Decade of Enbridge Oil Pipeline Spills

by Joyce Nelson,

**2000:** 7,513 barrels. Enbridge reported 48 pipeline spills and leaks, including a spill of 1,500 barrels at Innes, Sask.

**2001:** 25,980 barrels. Enbridge pipelines reported 34 spills and leaks, totalling 25,980 barrels of oil, including a January spill from Enbridge's Energy Transportation North Pipeline that leaked 23,900 barrels of crude oil into a slough near Hardisty, Alberta, and a September spill of 598 barrels in Binbrook, Ont.

**2002:** 14,683 barrels. Enbridge reported 48 oil spills and leaks, totalling 14,683 barrels, including a leak of 6,133 barrels in Kerrobert, Sask. in January; a seam failure in May that spilled 598 barrels in Glenboro, Man.; and a pipeline rupture into a marsh west of Cohasset, Minn. To prevent 6,000 barrels of crude oil from reaching the Mississippi River, Enbridge set the oil on fire.

**2003:** 6,410 barrels. Enbridge pipelines had 62 spills and leaks, totalling 6,410 barrels, including a January spill of 4,500 barrels of oil at the company's oil terminal near Superior, Wisc., and a June spill of 452 barrels of oil into Wisconsin's Nemadji River. In April, an Enbridge gas pipeline exploded, levelling a strip mall in Etobicoke, Ont. and killing seven people.

**2004:** 3,252 barrels. Enbridge pipelines had 69 reported spills, totalling 3,252 barrels of oil, including a February valve failure in Fort McMurray, Alta. that leaked 735 barrels of oil.

**2005:** 9,825 barrels. Enbridge had 70 reported spills, totalling 9,825 barrels of oil.

**2006:** 5,363 barrels. Enbridge had 61 reported spills, totalling 5,363 barrels of oil, including a March 613 barrel spill at its Willmar terminal in Saskatchewan and a December spill of 2,000 barrels at a pumping station in Montana.

**2007:** 13,777 barrels. Enbridge had 65 spills and leaks, totalling 13,777 barrels of oil, including a January pipeline break near Stanley, North Dakota, which spilled 215 barrels of oil; two pipeline incidents in January/February in Clark and Rusk Counties in Wisconsin which spilled 4,200 barrels of oil; and an April spill of approximately 6,227 barrels of oil into a field down-stream of an Enbridge pumping station at Glenavon, Sask. In November, an Enbridge pipeline carrying bitumen to U.S. Midwest markets exploded near Clearbrook, Minn., killing two workers.

**2008:** 2,682 barrels. Enbridge had 80 reported spills and leaks, totalling 2,682 barrels of oil, including a January incident at an Enbridge pumping station at the

Cromer Terminal in Manitoba that leaked 629 barrels of crude; a February incident in Weyburn, Sask., which leaked 157 barrels; and a March spill of 252 barrels of oil in Fort McMurray, Alberta.

**2009:** 8,441 barrels. Enbridge had 103 reported oil spills and leaks, totalling 8,441 barrels, including a pipeline incident at the Enbridge Cheecham Terminal tank farm that spilled 5,749 barrels of oil near Anzac, Alberta; a spill of 704 barrels in Kisbey, Sask.; and a spill of 1,100 barrels at Odessa, Sask.

**2010:** 34,122 barrels. Enbridge had 80 reported pipeline spills, totalling 34,122 barrels, including a January Enbridge pipeline leak near Nече, North Dakota of 3,000 barrels of oil; an April incident near Virden, Man. that leaked 12 barrels of oil into Bosshill Creek; a July pipeline spill in Marshall, Michigan that dumped 20,000 barrels of tar sands crude into the Kalamazoo River, causing the biggest oil spill in U.S. Midwest history; and a September pipeline spill of 6,100 barrels in Romeoville, Ill.

**Total: 132,715 barrels of oil, more than half the Exxon Valdez spill of 257,000 barrels**

Sources: Prince George Citizen (March 12, 2010); The Polaris Institute (May 2010); The Tye (31 July 2010); Reuters (Sept. 10, 2010); Enbridge.com 2010; Vancouver Sun (May 10, 2011); The Globe & Mail (June 17, 2011); Dogwood Initiative

- See more at: <http://www.watershedsentinel.ca/content/enbridge-spills#sthash.e8U7c4zM.dpuf>

FOH asserts that Minnesota Statute and Rule applicable to pipeline route permit review and comparative environmental analysis both permit and justify inclusion and assessments of impact from predictable events during the life history of the pipeline including the high probability for major leaks and/or ruptures releasing large quantities of crude oil into the environment. These predictable releases of oil are very likely to have significant adverse impacts on persons, property and natural resources along and downstream of each of the several route alternatives evaluated. Comparing these predictable impacts for all alternative routes should be a major factor in final route selection of the Sandpiper pipeline.

### **5. Pipeline Leak/Rupture Event Impact Scenario Analysis**

The Bristol Bay EIS continues in Section 11.2 with identification of 64 streams and rivers as potential product spill receiving waters because they were proposed to be crossed by the pipeline. But there were many more watersheds crossed at points near enough to downstream receiving waters to also be within the impact zone of a predicted pipeline leak or rupture.

In sections 11.3 of the EIS pipeline rupture/leak scenarios are described in detail including extensive treatment of probable duration and volumes of spills and flow times

to and extending predictable distances down receiving waters. Impacts are then described for two receiving streams typical of the landscape traversed by the pipeline.

The leak/rupture scenarios are developed fully in terms of:

1. Exposure – the physical mechanisms by which aquatic organisms would become exposed to the spilled product;
2. Transport and fate – the distance down stream the toxic components would travel down stream before dissipating, degrading or diluting below applicable water quality standards for each or most important chemical constituent of the product spilled;
3. Exposure - Response – A full analysis of the product for all toxic components, state and federal water quality standards for these chemicals and laboratory methods used to simulate water column concentrations of each chemical of concern;
4. A review of analogous spills into likely receiving water types including isolated lakes, lake chains, high or low quality streams, wetlands of different types;
5. Risk Characterization –comparing exposure levels to toxicological benchmark levels, duration of risks, actual spill histories including potential for remediation and recovery of spilled product, site specific factors and overall weight of evidence; and
6. The Range of Uncertainties in each of these pieces of evidence.

Scenarios for important Bakken Sweet Crude flowing to receiving rivers, streams, lakes, wetlands or wild rice beds along preferred Sandpiper route (and all accepted alternative routes) could then be developed similar to that developed for diesel fuel spill scenario in the Bristol Bay EIS with similar assumptions and calculations in Table 11-7 from that EIS below:

<b>Table 11-7. Parameters for diesel pipeline spills to Chinkelyes and Knutson Creeks.</b>			
Parameter	Spill into Chinkelyes Creek		Spill into Knutson Creek
	Chinkelyes Creek	Iliamna River	Knutson Creek
<b>Water Flow</b>			
Discharge (m <sup>3</sup> /s)	1.8	22	3.4
Velocity (m/s)	2.2	2.0	2.2
Channel Length (km)	14	7.6	2.6
<b>Pipeline Drainage and Dilution</b>			
Flow rate while draining (m <sup>3</sup> /s)	0.035	-	0.023
Flow rate while pumping (m <sup>3</sup> /s)	0.005	-	0.005
Release time—draining (minutes)	13	-	7.9
Release time—pumping (minutes)	5	-	5
Volume—total (m <sup>3</sup> )	30	-	12
Volume % diesel to water in stream at spill	2.2%	-	0.83%
Mass of diesel in stream at input (mg/L)	17,000	1,500	6,500
Maximum concentration dissolved diesel (mg/L)	1.9-7.8	1.7-7.2	1.9-7.8
Distance traveled during release (km)	1.7		1.1
Travel time to confluence (minutes) <sup>a</sup>	110	64	19
<b>Pipeline and Diesel Specifications</b>			
Length from top of nearest hill to valve (m)	2100	-	810
Elevation drop (m)	150	-	25
Viscosity of diesel at 15°C (cP)	2		
Density of diesel at 15°C (metric tons/m <sup>3</sup> )	0.85		
Notes:			
Dashes (-) indicate that spill is not directly into Iliamna River, which receives flow from Chinkelyes Creek.			
<sup>a</sup> Confluence with Iliamna River for Chinkelyes Creek; confluence with Iliamna Lake for the Iliamna River and Knutson Creek.			

Based on these spill parameters similar predictions could be developed for important aquatic plant and/or animal life in the selected receiving waters along each alternative route in the CEA as shown in the following chart from the Bristol Bay EIS that compares the scenarios developed for Alaskan steams to other case histories of similar spills around the country as a means of “ground truthing” or testing validity of their predictive scenarios

**Table 11-9. Cases of diesel spills into streams.** For comparison, the diesel pipeline failure scenarios evaluated here would release 30 and 8 m<sup>3</sup> of diesel into receiving streamflows of 1.8 and 3.4 m<sup>3</sup>/s for spills into Chinkelyes Creek and Knutson Creek, respectively.

Case	Diesel Released (m <sup>3</sup> )	Receiving Streamflow (m <sup>3</sup> /s)	Observed Effects
Happy Valley Creek, AK	3.7	14	Significant declines in the abundance and species richness of invertebrates
Camas Creek, MT	Unknown	0.42	Low invertebrate abundance and richness
Hayfork Creek, CA	15	4.1	Large kill of vertebrates and invertebrates
Mine Run Creek, VA	240	1.2	Reduced invertebrate abundance and diversity
Reedy River, SC	3,600	6.4	Near-complete fish kill
Cayuga Inlet, NY	26	1.8	Fish kill and reduced abundance, reduced invertebrate abundance and species composition
Westlea Brook, UK	9.8	1.34	Fish kill, invertebrates severely affected
Hemlock Creek, NY	0.5	0.76	No significant effects on invertebrates
Notes: * Mean flow from NHDPlus v2; others as reported by the authors.			

## **6. NEED FOR ADDITIONAL LEAK/RUPTURE SCENARIOS UNIQUE TO SANDPIPER ROUTES**

### **Sandpiper Leak/Rupture Ground Water Aquifer Contamination Scenario**

In the Bristol Bay/Pebble Mine EIS there was no identified need to assess potential for groundwater contamination that might result from a typical leak or spill from the pipelines serving the mines. However, in the case of the preferred route for the Sandpiper crude oil pipeline there are several highly vulnerable aquifers including the Straight River Aquifer near Park Rapids that has been extensively studied.

To fully appreciate the nature and scope of the contamination risk to this important aquifer a set of leak/spill scenarios similar to the surface water impact scenarios used in the Bristol Bay EIS should be developed in the Comparative Environmental Analysis for Sandpiper and any of the alternative routes accepted for consideration in the analysis.

Preparation of groundwater aquifer impact scenarios in susceptible glacial outwash formations that exist along the proposed Sandpiper route are likely to be made significantly more accurate by virtue of extensive study of an historic Enbridge (then dba Lakehead Pipeline Company in Minnesota) pipeline rupture in 1979 west of Bemidji near the small community of Pinewood. The Pinewood study would provide case study calibration data and the equivalent “ground truthing” of predictive groundwater contamination scenarios developed for Sandpiper route alternatives as was recommended in the surface water scenarios above..

A summary of the history and some of the research results applicable and useful in preparation of the Comparative Environmental Analysis for the Sandpiper project is found in a US Geological Survey factsheet found at the website shown below and an excerpt from this factsheet follows:

<http://mn.water.usgs.gov/projects/bemidji/results/fact-sheet.pdf>

(Excerpt from factsheet)

*Description and History of Site*

*On August 20, 1979 approximately 16 kilometers northwest of Bemidji, Minnesota, the land surface and shallow subsurface were contaminated when a crude-oil pipeline burst, spilling about 1,700,000 L (liters) (about 10,700 barrels) of crude oil onto a glacial outwash deposit (fig. 1). Crude oil also sprayed to the southwest covering an approximately 7,500 m<sup>2</sup> (square meter) area of land (spray zone). After cleanup efforts were completed about 400,000 L (about 2,500 barrels) of crude oil remained. Some crude oil percolated through the unsaturated zone to the water table near the rupture site (North oil pool, fig. 1). Some of this sprayed oil flowed over the surface toward a small wetland forming a second area of significant oil infiltration (South oil pool).*

*The land surface is a glacial outwash plain underlain by stratified glacial outwash deposits. The water table ranges from near land surface to about 11 m below the land surface. About 370 wells and test holes had been installed as of 1998.*

*Research Results*

*The fate, transport, and multiphase flow of hydrocarbons depends on geochemical processes and on the processes of volatilization, dissolution, biodegradation, transport, and sorption (fig. 2). An interdisciplinary investigation of these processes is critical to successfully evaluate the migration of hydrocarbons in the subsurface. The investigation at the Bemidji site involved the collection and analysis of crude oil, water, soil, vapor, and sediment samples. The oil phase that occurs as floating product on the water table and as residuum on sediment grains provided a continued source of hydrocarbon to the ground-water and vapor plumes. Knowledge of the geochemistry of a contaminated aquifer is important to understanding the chemical and biological processes controlling the migration of hydrocarbon contaminants in the subsurface. Studies were also conducted to document the concentrations of gases in the unsaturated zone.*

Predictable Sandpiper pipeline lead/rupture ground water impact scenarios for susceptible glacial outwash aquifers along the preferred and all alternative routes evaluated could be modeled graphically (as in the figure below from that study) with methods developed in the Pinewood Spill study. Graphics thus developed could be made available in the CEN for the public and regulatory agencies to weigh in making various permit decisions and choices between alternative routes.



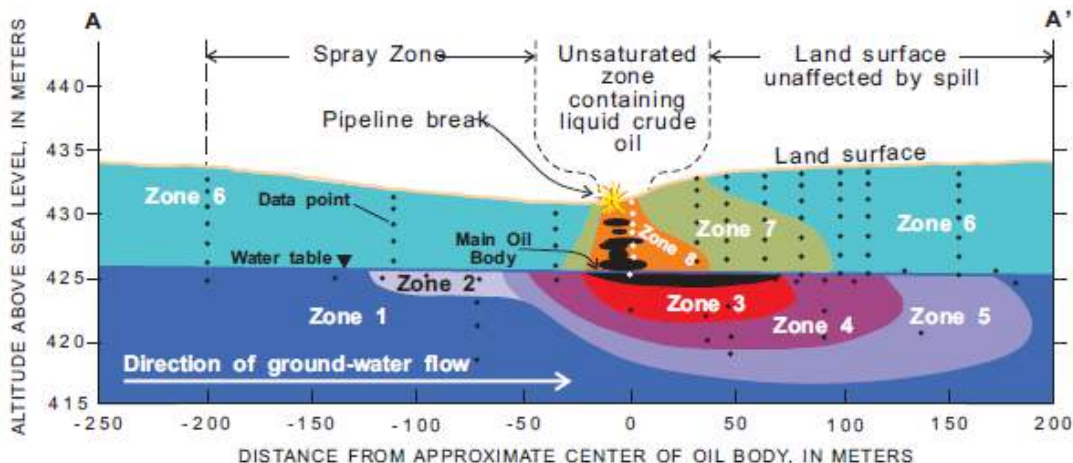


Figure 4. Geochemical zones in the unsaturated and saturated zones at the North oil pool, 1997 (Modified from Baedecker and others, 1993).

Note: Predictive models for groundwater contaminant plumes in leak/rupture scenarios can be used for comparing alternative routes and for setting GIS Spatial Analysis friction parameters discussed elsewhere in these comments.

A brief bibliography of studies of the Bemidji/Pinewood spill site assembled by the U.S. Geological Survey Minnesota Water Science Center that can be used to develop and support groundwater contamination scenarios for selected susceptible glacial outwash aquifers along the proposed Sandpiper route and its alternatives is shown below:

Fact sheet describing results from the Bemidji Toxics project

#### **Toxics Papers:**

- "Ground water contamination by crude oil" (146 KB) by Geoffrey Delin and William Herkelrath.
- "Long-term monitoring of unsaturated-zone properties to estimate recharge at the Bemidji crude-oil spill site"(498 KB) by Geoffrey Delin and William Herkelrath.
- "Aromatic and Polyaromatic Hydrocarbon Degradation under Fe (III)-Reducing Conditions" (135 KB) by Robert T. Anderson, et al.
- "Coupled Biogeochemical Modeling of Ground Water Contamination at the Bemidji Minnesota Crude Oil Spill Site" (60 KB) by Gary Curtis, et al.
- "Investigating the Potential for Colloid- and Organic Matter-Facilitated Transport of Polycyclic Aromatic Hydrocarbons in Crude Oil-Contaminated Ground Water" (136 KB) by Joseph Ryan, et al.
- "Determining BTEX Biodegradation Rates Using In Situ Microcosms at the Bemidji site, Minnesota: Trials and Tribulations" (69KB) by E. Michael Godsy, et al.
- "Inhibition of Acetoclastic Methanogenesis by Crude Oil from Bemidji, Minnesota" (143 KB) by Ean Warren, Barbara Bekins, and E. Michael Godsy.

#### **Posters Presented at Technical Conferences:**

- "Estimating multiphase hydraulic properties at a crude-oil spill site" by William Herkelrath, Hedef Essaid, and Leslie Dillard, USGS, Menlo Park CA

A poster presented at the "International workshop on Characterization and measurement of the hydraulic properties of unsaturated porous media", Riverside, CA, October 22-24, 1997.

**Related links that include results from the Bemidji site:**

- Fate of Organic Chemicals in Subsurface Environments
- Microbiology and Molecular Ecology studies in Bemidji, MN
- Multiphase flow, transport, reaction and biodegradation
- Comprehensive Organic Analysis of Water
- Transport and Biogeochemical Fate of Organic Substances in Aquatic Environments
- Biogeochemical Controls on Organic Contaminant Degradation in Heterogeneous Near Surface Environments
- Comparative Study of Organic Degradation in Selected Hydrologic Environments

**Figures:**

- Geochemical zonation (17 KB) diagram.
- Plan view aerial photo from 1991 (85 KB) showing topographic contours and well locations at the site.

**7. Bakken Sweet Crude Oil Volatility/Flammability Consideration in Leak/Rupture Scenario Development**

Transportation Safety Board of Canada's Operation Service Branch Laboratory Report # LP148/2013 entitled "Analysis of Crude Oil Samples - Montreal, Maine & Atlantic Railway, Train MMA-002 - Date of Occurrence: 06-Jul-2013" which was just released on February 6th 2014. The relevance of this report to the Sandpiper routing process Comparative Environmental Analysis is that the train derailment investigated involved a major spill of the same product proposed to be shipped by the Sandpiper, namely Bakken sweet crude oil. The full report is available at:

<http://www.tsb.gc.ca/eng/enquetes-investigations/rail/2013/R13D0054/lab/20140306/LP1482013.asp>

Excerpts from the report follow:

"On 06 July 2013, a unit train carrying petroleum crude oil operated by Montreal, Maine & Atlantic Railway derailed in Lac-Mégantic, Quebec. Numerous tank cars ruptured and a fire ensued.

"Conventional oil, which can range from light to medium in grade, is found in reservoir rocks with sufficient permeability to allow the oil to flow through the rock to a well. The petroleum crude oil on the occurrence train originated from suppliers with producing wells in the Bakken Shale formation region of North

Dakota. The Bakken Shale formation is a tight oil reservoir. Tight oil is a type of conventional oil that is found within reservoirs with very low permeability. Most oil produced from low-permeability reservoirs is of the light to medium variety, with a lower viscosity. “

Elsewhere in this Canadian TSB report Bakken Sweet Crude is compared to the volatility of unleaded gasoline:

“The Environmental Technology Centre (ETC) Oil Properties Database reports the following properties for unleaded gasoline: 45

- Flash point -30°C
- Density at 15°C 750 to 850 kg/m<sup>3</sup>
- Kinematic viscosity <1 cSt at 38°C

“Comparing these values to the occurrence crude oil results summarized in Table 2, it is apparent that the occurrence crude oil’s flash point is similar to that of unleaded gasoline. The density results obtained for the occurrence crude oil samples (see Table 10) are also within the range reported for unleaded gasoline. However, unleaded gasoline has lower viscosity than the occurrence crude oil samples.”

The Canadian TSB report includes the following pertinent conclusions that would be important in the development of leak/rupture incident response scenarios in the Sandpiper comparative environmental analysis:

“4.3 The occurrence crude oil’s properties were consistent with those of a light sweet crude oil with volatility comparable to that of a condensate or gasoline product.

4.6 The large quantities of spilled crude oil, the rapid rate of release, and the oil’s high volatility and low viscosity were likely the major contributors to the large post-derailment fireball and pool fire.

4.7 The occurrence crude oil contained concentrations of BTEX that were comparable to typical values reported for crude oils. This explains why concentrations of benzene and other VOCs well above exposure limits were detected at the derailment site.”

### **8. DEPT OF COMMERCE STAFF COMMITMENT TO PROVIDE FOH ASSISTANCE IN DEVELOPMENT OF ALTERNATIVE ROUTE DATA.**

FOH has complained strenuously to Department of Commerce, to the Public Utilities Commission and to the applicant that two factors have severely limited its member’s ability to identify and develop reasonable and prudent alternative routes for use in preparation of the planned Comparative Environmental Analysis for Sandpiper. Most important among these limitations has been the very short amount of time allotted for the public to prepare route proposals and the withholding by both Enbridge and the two

Departments of certain technical data in the form of Geographic Information System (GIS) data files called “GIS shapefiles” for the proposed Sandpiper route.

Requests by FOH for extensions of time beyond the established deadline of April 4<sup>th</sup> 2014 for submitting alternative route proposals have been steadfastly refused by Department staff. These denials of FOH’s requests for such time extensions, while provided for in applicable administrative rules with showing of cause, have issued from the Department’s staff without their providing justification for denying such requests.

FOH takes very seriously all the considerations as described in Subpart 3. that must be taken into account when selecting suitable alternative routes for transporting such hazardous material as Bakken Crude Oil across Minnesota. As required by the rules as set forth in PUC 7852.1400 great multitude of parameters must be considered simultaneously and repeatedly for what could be endless possible routes. Thankfully, technology has recognized the complexity of the task and the enormity of data that one has to consider to meet the rule and Geographic Information Spatial Analysis is one such technology.

From Enbridge’s Minnesota Environmental Information Report on Sandpiper submitted to the PUC as part of the company’s application it is apparent that Enbridge used Geographic Information System data analysis method similar to the Spatial Analysis referenced above. The following paragraphs are excerpted in part from that report:

“EPND assessed the route from Tioga, North Dakota to Superior, Wisconsin, with the intent of maximizing existing right-of-way to the extent practicable while identifying specific areas where co-location may not be practicable. The first step in the environmental review of the route and the selection process consisted of collecting publicly available environmental data to identify routing constraints. The sources of data consisted primarily of: Geographic Information Systems (“GIS”) digital information layers, including U.S. Geological Survey (“USGS”) topographic maps, USGS land use database, U.S. Department of Agriculture (“USDA”) Farm Services Agency aerial photography and GIS data, National Wetlands Inventory (“NWI”) maps, Minnesota Department of Natural Resources (“MNDNR”) Natural Heritage Information System (“NHIS”) data, Minnesota Department of Transportation (“MDOT”) highway maps, USDA state soil geographic (State Soil Geographic [“STATSGO2”] and Soil Survey Geographic [“SSURGO”]) databases, and other natural feature databases obtained from the MNDNR website and other state and federal sources. Existing major utility rights-of-way also were identified for potential use in co-location.

### 2.3.3 Comparison of Route Alternatives

EPND conducted a detailed quantitative analysis of environmental impacts along each route alternative identified during the routing process. The analysis used the same sources of publicly available environmental data described in Section 2.3.1 to compare a variety of factors, including proximity to existing rights-of-way,

wetlands, highly wind erodible soils, bedrock outcrops, prime farmland soils, perennial waterbodies, national forest land, tribal land, state forest land, state Wildlife Management Area (“WMA”) land, state Aquatic Management Area (“AMA”) land, railroads crossed, roads crossed, and other site-specific matters. No field survey data was used in the alternatives analysis as field surveys were not completed along the alternate routes. EPND identified and analyzed four route alternatives, which are presented in the following subsections and shown in Figure 2.3.2-1. None of the route alternatives were adopted as the Project’s preferred route.”

Enbridge apparently had submitted the GIS information they developed for their preferred route to the PUC including the GIS shapefile they constructed. FOH had hoped to utilize the GIS Shapefiles Enbridge had applied to their alternative route analysis to explore the applicants preferred southern route to any and all alternative routes considered viable by cursory examination of various maps and other resources. However neither Enbridge nor the Department of Commerce (DOC) staff would release the shapefile claiming it was protected information under both Federal and State statute.

FOH was never granted access to the subject GIS shapefile by either Enbridge or Dept of Commerce but did successfully obtain the shapefile from the Minnesota Department of Natural Resources after finding that the data were not protected by either Federal or State Statute as claimed by Enbridge and DOC. Unfortunately, the release of the GIS shapefile for the Sandpiper preferred route was far too late into the comment period for FOH to make productive use of the data.

Having made its case that FOH was severely hindered in its efforts FOH has appealed to DOC staff for assistance in meeting the rigorous criterion that must be met in 7852.1400 Subp. 3. Requirements for other route sources.

Subp. 3. A person other than one listed in subpart 2 (the applicant) may propose a route or a route segment according to items A to C. In Subpart 3.B. of this rule it states that: “The pipeline route or route segment proposal must contain the data and analysis required in parts [7852.2600](#), subpart 3, and [7852.2700](#), unless the information is substantially the same as provided by the applicant.”

Department of Commerce staff, in a prehearing scheduling conference call in the presence of all the parties to the Sandpiper project and the Administrative Law Judge, Judge Eric Lipman agreed to assist FOH in developing the necessary detailed information necessary to meet the minimum requirements of MN 7852.1400 cited above such that suggested alternative routes put forth by FOH would not be summarily dismissed from consideration for lack of required supporting data analysis required by that rule. FOH is committed to meeting with DOC staff immediately following the April 4<sup>th</sup> comment deadline. FOH will, under separate cover be submitting alternative routes for Sandpiper before the comment deadline. It was understood that the alternative routes thus submitted by FOH will require the DOC staff assistance offered to meet the criterion in the rule to

make them viable per this agreement thus it is expected that the DOC will continue to develop FOH alternatives submitted such that the FOH alternatives will be found acceptable by the commission.

## **9. METHODS OF DEVELOPING AND COMPARING ALTERNATIVE ROUTES**

The applicant, the PUC, the DOC and the public are all confronted with the same challenge. That is to develop alternative routes for Sandpiper that meet the criterion established in MN Rules 7852.1900 CRITERIA FOR PIPELINE ROUTE SELECTION while satisfying the requirement in MEPA for having considered all reasonable and prudent alternatives.

The applicant, having already utilized considerable GIS technology should be well positioned to employ computerized route optimization algorithms to evaluate their preferred route against any and all routes that meet PUC criterion. In fact, they may have already done so during their own comparison of routes. Furthermore, it is the understanding of FOH that the DOC is considering hiring an outside consultant for purposes of assisting the DOC in preparing the Comparative Environmental Analysis. There are many private consultants in the United States performing optimization analysis of linear public and private utilities by applying route optimization software. We would be happy to provide such consultant lists to the DOC staff upon their request.

We provide below, for those who may not be familiar with this technology, a brief description of how Geographic Information Spatial Analysis Systems have evolved into a powerful tool for selecting optimal routes for linear facilities like power lines, pipelines, highways and other utilities. FOH strongly encourages the DOC to specifically contract with outside consultants skilled and experienced in linear facility route optimization to more fully satisfy the requirements in applicable rules and statute to find and select the most reasonable and prudent alternative route for the Sandpiper and all future linear facilities of this nature. It is recommended that the DOC exercise its and the PUC's authority under rule to also develop alternative routes for Sanpiper.

Here is a detailed description of how this technology could be used to satisfy the statutory requirement to examine all reasonable and prudent alternative routes for Sandpiper while adhering most closely to the constraints of time frames provided in rule and law.

### ***5.1.1.20 Graphical Information System***

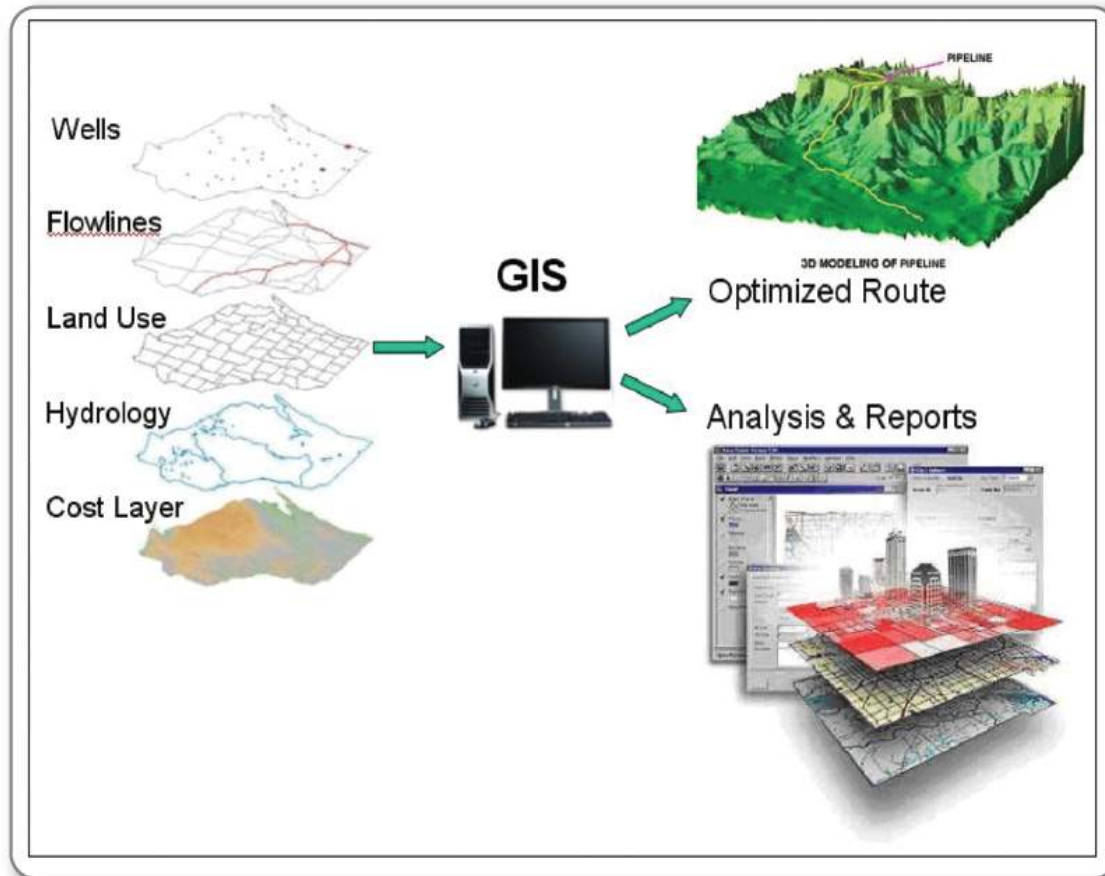
#### **5.1.1.20.1 General**

Geographic Information Systems (GIS) are scientific and technological tools that enable the integration of data from different sources into a centralized database from which the data is modeled and analyzed based on its spatial component. GIS-based tools and processes have been extensively used to address the challenges of optimizing pipeline route selection and route networks based on the collection, processing and analysis of spatial data such as topography, vegetation, soil type, land use, geology and landslide areas.

Traditional manual pipeline routing uses available paper maps, drawings, aerial photographs, surveys and engineer experience. GIS techniques combine all of these sources of data in a convenient computer-based information system. The key to the GIS is that it has advantages in terms of speed of data processing and analytical capability.

Fig. 2 is a simplified representation of how data is combined and processed in a GIS to produce models and required outputs. Data, such as well locations, surface topography, land use activities, soil conditions and infrastructure features, are combined based on their spatial component. This enables the engineer to test real-world scenarios within the spatial models.

Fig. 2: Process To Optimize Pipeline Routes



GIS represents an innovative approach to pipeline routing that is both systematic and effective. Optimizing a pipeline route is essentially an optimization between costs of the material and the costs of the construction. Natural and man-made terrain obstructions cause spatial variations in construction cost due to changing features like types of soils, intervals of slope. GIS allows the engineer to use dynamic spatial models to aid in selecting an optimized pipeline route. The GIS software and data enables the processing of a large amount of location-based information to find a least cost path (LCP) between two locations by taking into account natural and manmade obstructions and features.

#### 5.1.1.20.2 GIS Routing Optimization Methodology

The GIS approach to pipeline routing optimization is based on relative rankings and weights assigned to project specific factors that may affect the potential route. The result of this process is a least cost path (LCP) which represents that most economic path between the origin and the destination points of the pipeline.

Fig. 3 is a representation of the methodology flow used to determine the LCP

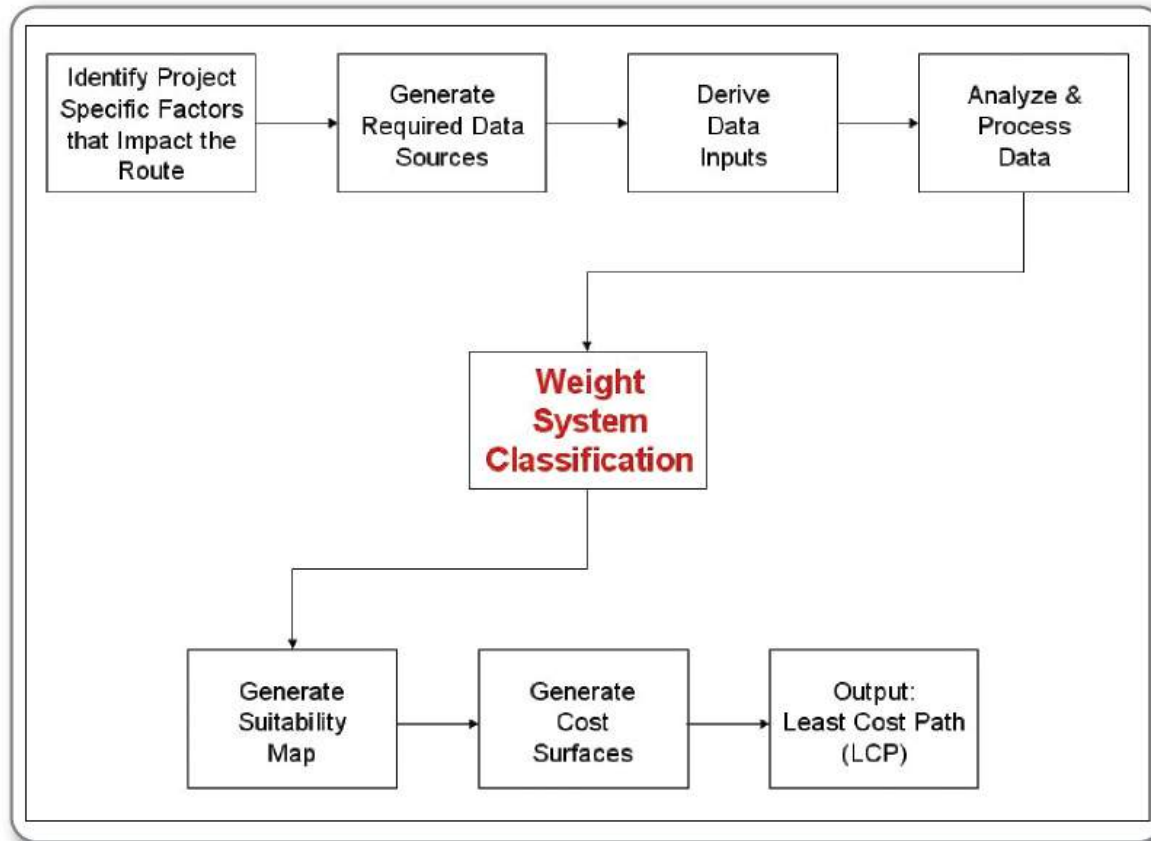


Fig. 3: Pipeline Optimization Methodology

### 5.1.1.20.3 Identification of Factors Affecting the Route

As mentioned in the previous section on selection criteria the identification of project-specific factors that may constrain or impact on the pipeline is an important step and a vital input to the GIS. Several factors such as geo-hazards, social issues and construction costs impact on the route and need to be taken into account. At this stage a set of rules are determined that will be used in the routing exercise. Input from experienced engineers is required to ensure that the appropriate features are identified and the correct rules established. The accuracy of the subsequent analysis is dependent on the factors being correctly identified as the analysis is only as good as the inputted data. Examples of some factors and rules include:

Factor/Feature	Rule
Roads	<ul style="list-style-type: none"> <li>• Avoid road crossings</li> <li>• Proximity to roads is important</li> </ul>
Railway lines	<ul style="list-style-type: none"> <li>• Avoid railway line crossings</li> </ul>
Rivers	<ul style="list-style-type: none"> <li>• Avoid river crossings</li> </ul>
Urban areas	<ul style="list-style-type: none"> <li>• Avoid built up/populated areas</li> <li>• Avoid future development areas</li> </ul>
Terrain/topography	<ul style="list-style-type: none"> <li>• Avoid steep slopes</li> <li>• Use flat terrain where possible</li> </ul>



Environmental areas	• Avoid highly-sensitive areas
Wetlands	• Avoid wetland crossings
Water bodies	• Avoid water bodies
Surface geology	• Avoid surface/sub-surface rock • Stable soils are important

#### 5.1.1.20.4 GIS Data and Data Sources

Satellite imagery, maps, aerial photography, existing GIS data, LiDAR surveys and traditional geotechnical and topographical surveys are all sources of data that should be gathered and incorporated into the project GIS. The maps, satellite imagery and remote sensed data are scanned and geo-referenced and are then used to derive spatial features such as roads, rivers, urban areas and geological boundaries which form the GIS data to be used in the routing process.

#### 5.1.1.20.5 GIS Data Processing and Analysis

Once the data has been captured it needs to be processed and converted into raster data. The raster data is used to calculate the feature distance cost for each feature – the weighted cost as one moves away from a feature. For example rivers are given a high cost and the further you move away from the river the lower the feature distance cost becomes.

The significance of the effect of a single feature on the pipeline route varies for each feature. For example, it is more important to avoid a deep valley crossing than it is to avoid a road crossing. The analytical hierarchy process (AHP) is one of the structured methods that can be employed to quantitatively rank each of the identified factors. Each factor is assigned a cost value which is benchmarked with typical constructions costs. The input from experienced engineers is vital when it comes to ranking and assigning weights to each layer.

#### 5.1.1.20.6 GIS Suitability Map Generation

After the feature layers have been ranked the data layers are combined together into one single layer based on the numerical value factor derived from the weighting process. The resultant layer is referred to as the suitability layer and this layer forms the basis for the GIS analytical work.

The suitability map is used to create cost maps which related to relative construction costs. The highest costs are in steep mountainous terrain, urban areas, roads and large bodies of water. Moderate costs are associated with wetlands, forests and high slope areas. The lowest costs are to be found in areas of relatively flat bare ground, agricultural land or less dense native vegetation. See Fig. 4 for an example of a cost map.

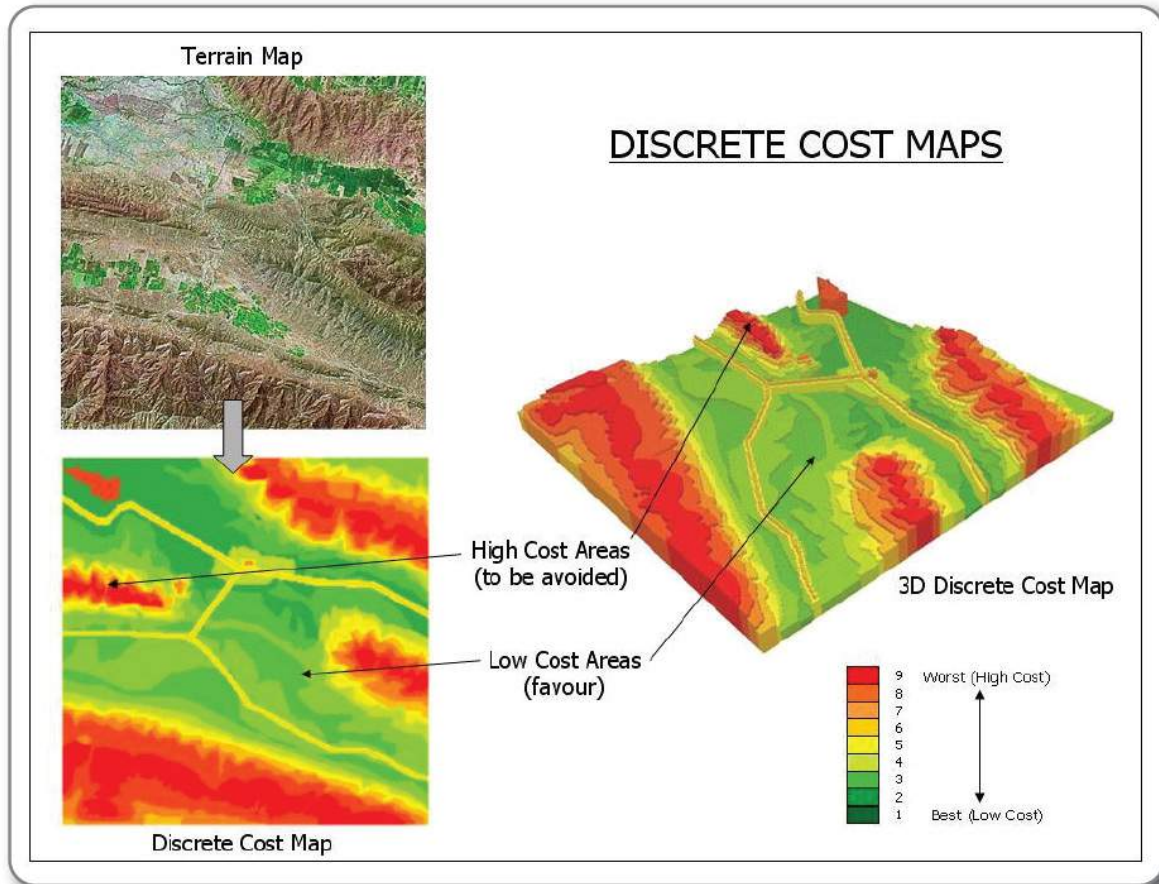


Fig. 4: Discrete Cost Map

The least cost path is the product of the GIS analysis and represents the path of least resistance from the origin of the pipeline along a surface to the destination point.

The strength of the GIS is that re-routes can quickly be incorporated into the system and the implications of the reroutes or alternative routes can be quickly assessed.

The combination of the data layers allows the engineer to test multiple pipeline network design and selection scenarios easily and efficiently. The GIS automatically calculates the lengths of new pipelines or pipeline networks. This allows for rapid total cost calculations and the running of multiple 'what if' scenarios to see the effect of changes to the pipeline design.

A GIS can produce a number of outputs quickly and efficiently in relation to pipeline routing:

- Survey request area delimitation drawings
- Land allocation/permitting drawings
- Pipeline routing drawings
- Alignment sheets (see Fig. 5)
- Tabular outputs (i.e. MTOs)
- Pipeline coordinates

(The GIS Route Optimization shown above is an open source document available on the internet and is not the property of FOH)

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It is a vitally important step in employing GIS route optimization methodology that the selection of factors (environmental, demographic, social issues, and others) that are to affect the potential route selected and the weight each of these factors has in the final outcome must be carefully constructed. (See Section 5.1.1.20.2 GIS Routing Optimization Methodology in the method description above). FOH strongly recommends that a Citizen Advisory Committee or other expert panel be assembled to generate a draft set of criterion that includes the mandatory criterion set forth in PUC pipeline routing rules and other factors that may reasonably be considered and suggest a scheme of weighting of these factors to be utilized in identifying the “least cost path” and ranking of all alternative routes being considered for the Sandpiper pipeline.

This draft set of route selection criterion and assigned weights of each factor should be subjected to a full round of public information and comment sessions as required by applicable rules in the routing and/or pipeline need process. After a full public vetting and consensus building process the GIS Route Optimization product or products produced with this final set of weighted criterion would be ready to move forward through the remaining steps of the prescribed permitting process.

Minnesota is fortunate to have had forward looking government agency staff that recognized the importance and utility of providing the public with access to statewide data sets in GIS digital format. The MDNR maintains the state Data Deli system available at: <http://deli.dnr.state.mn.us/> and provide links to many other state and federal sources of useful GIS data.

As a special note here, one important criterion that FOH believes has been under represented in past pipeline routing efforts in Minnesota and that must be included here as a heavily weighted routing criterion is groundwater aquifer susceptibility.

## **10. CUMMULATIVE IMPACTS**

### **A. Reasonably Foreseeable Future Actions**

In an investor conference held on April 2<sup>nd</sup> 2014 Enbridge announced publically and publically published the company’s future plans for expanding pipeline infrastructure in Minnesota. Contained in this published document was a map for the replacement of Enbridge’s existing line three which was announce earlier this spring. What was not disclosed in the earlier announcement was that Enbridge’s preferred route for the line 3 replacement follows the proposed preferred route for the Sandpiper pipeline. This constitutes a “reasonably foreseeable future action” that must be folded in to any environmental review document assessing impacts of the Sandpiper pipeline including the CEA being prepared by the DOC on sandpiper.

See the cover page with date and authors and the map from page 50 of the Enbridge document.

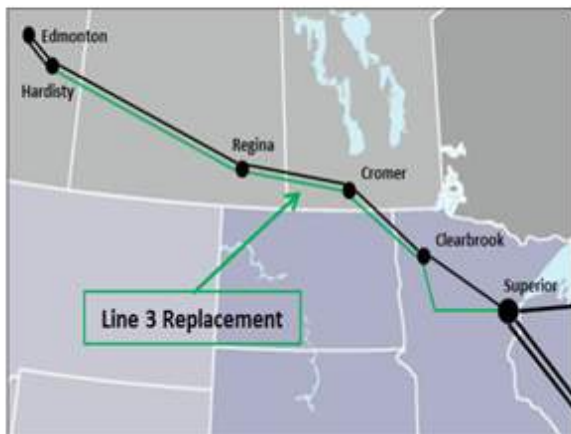


**EEP&MEP**  
INVESTOR DAY 2014

April 2, 2014 • New York City



## Line 3 Replacement



### The Project:

- Replace 1,031 miles of 34" pipeline with 36" pipeline

### Cost:

- U.S. Portion: \$2.6 Billion\*

### In-service date:

- 2017

### Status:

- Reassembled successful Alberta Clipper project team
- Securing supply chain
- Known corridor with established relationships

\* Project to be jointly funded by ENB and EEP at participation levels to be finalized and approved by a Special Committee of the independent Board of Directors.

## B. Impacts of Pipelines on Future Urban or Rural Development

Pipelines become significant impediments to growth and development along their easement corridors. Because of the risk for damage to an operating pipeline, pipeline companies have very strict and complex requirements for granting encroachments into their easements. As a result, it becomes costly and time consuming for local governments to extend roads and underground utilities over a pipeline easement. This has not been factored into the State's process of reviewing proposed pipeline routes because it is outside of their purview. It might prove useful to contact every local jurisdiction along the route to let them know how difficult it will be for them to obtain permission to extend new roads or utilities across pipeline easements and the extra time and expense they can expect. Communities should be alerted to the need for reviewing their comprehensive growth plans and considering future road needs as a relevant issue to evaluate. Areas within orderly annexation districts should consider future private development interests and realize that developers will shy away from parcels with pipeline easements recognizing they are as difficult to deal with as railroads and they can present adverse marketing impacts.

Pipelines have been handled differently by states and larger cities across the country with some establishing conditions and laws to address the above

concerns. Minnesota has not yet done that, leaving the local governments simply adversely impacted without compensation. Developing this information in the comparative environmental analysis could be used to both minimize these impacts on local units of government as well as to alert those along the route finally selected of the need to update comprehensive plans and transportation plans to respond to the presence of the new pipeline.

The impacts of the several alternative routes for sandpiper should include these impediments to development as a cumulative impact.

### **C. Community Preparedness For Pipeline Rupture/Leak Incidents**

Scenario development for highly predictable leak/rupture events logically lead to considerations for disaster preparedness needed by communities near the pipeline route. Special training for first responders that alert communities to the volatility, flammability, explosiveness and human exposure concerns would be essential. Rupture/leak disaster preparedness would involve consideration and possible need to procure special fire fighting, remediation and recovery equipment and training local fire departments would need to be alert to and prepared for extraordinarily difficult fire fighting conditions. Consideration of the consequent new burdens and or risks imposed on local fire/rescue personnel and the need for more or specialized equipment posed by having a pipeline transporting hazardous materials near or through their communities should be included in the CEA. Alternative routes could be evaluated to explore ways to lessen or to mitigate these predictable impacts.

FOH recommends that this socio-economic impact be included in the CEA among the potential cumulative impacts of the project.

## **11. FINANCIAL ASSURANCE**

FOH has serious concerns for the apparent ephemeral nature of a Limited Liability Corporation being created by Enbridge for the sole purpose of constructing and operating the proposed Sandpiper and possibly other crude oil pipelines in Minnesota. This is especially true for pipelines intended to transport the extremely hazardous Bakken Sweet Crude, the nature of which is described earlier in these comments. FOH would urge your Departments, if it has such authority, to seriously examine the financial assurance Minnesota citizens will have that North Dakota Pipeline Company LLC will be financially capable and responsible for appropriate response, remediation, and long term care of any pipeline or pipeline product impacts on people, property and/or the natural environment, whether intended or accidental. If neither the DOC nor the PUC have the authority to impose requirements of special financial instruments that can assure such financial assurance exists, FOH requests that your departments work with such agencies that may have this authority or, lacking any such authority in state or federal government, we request that your respective department's join with FOH to approach the state legislature with draft legislation enabling the appropriate state agency with the necessary

authority to require adequate financial assurance from all pipeline companies doing business in Minnesota.

## **12. TRANSPARENCY, EQUAL ACCESS AND EQUAL TREATMENT**

FOH concludes its comments with some remarks about the PUC and DOC “general responsibilities” as provided in rule and principles of good government and citizen’s right to basic freedom of speech. We remind you of one of the applicable rules here.

### 7852.4100 GENERAL RESPONSIBILITIES.

The commission shall monitor the effectiveness of this chapter and shall take appropriate measures to modify and improve the effectiveness of this chapter. The commission shall assist governmental units and interested persons in understanding the rules.

The overall experience of FOH members throughout their involvement in the matter of the proposed Sandpiper pipeline has ranged from frustration to befuddlement, to confusion, rejection, and exclusion. Having our state government department staffs perform in ways that have been outwardly defiant, defensive, obfuscating and off putting has created a deep sense of distrust, suspicion and at times utter outrage. Our members and organization representative’s attempts to fully participate in the decision-making process have been rebuffed on numerous occasions.

When FOH members prepared an information display for the public viewing at the several public meetings Enbridge’s attorney and both Commerce Department (DOC) and Public Utilities Commission (PUC) staff rejected us advising us that such a display was not allowed in this public forum. This rejection was in spite of the fact that Enbridge was allowed to use similar visual aids in the form of posters, charts, maps and mounted photographs to not only present the facts of their pipeline proposal but to self-promote and embellish themselves as good corporate citizens claiming the company was a stellar corporate citizen with an excellent record of pipeline operating safety. FOH contends that for our state government to create a public forum for the express purpose of receiving public comment on a pending permit action and then deny the public the opportunity to voice its questions, concerns and to counter misrepresentations of Enbridge’s safety record utilizing similar media methods is an infringement of citizen’s freedom of speech as protected by the First Amendment of the U.S. Constitution.

FOH was denied access to certain technical data including Geographic Information System (GIS) files submitted to the PUC by Enbridge with their application. And when FOH, many individual citizens, a number of state wide organizations representing these citizens as well as Township and County government units requested extensions of comment deadlines to allow disenfranchised “snowbird” citizens opportunity to participate in the important “routing” phase of the project, DOC staff have summarily rejected these requests. DOC staffs defend their refusal to extend timelines as being firmly based on their unswerving intent to honor the compressed timeline set out in

recently amended statutes and rules that clearly favor pipeline industry interests over those of the public.

And, to add insult to injury, when the DOC and PUC staff established an on-line public record website that is advertised a “full record” of documents and comments received in the matter of the pipeline project they refuse to post the many petitions they received requesting that timelines be extended. This denies the general public the right to know that if they have made a request for comment period extension that they are not alone. This refusal by government agencies to fully and accurately publish the public record in the manner intended acts to discourage citizens from participating believing that their voices are not being heard. This defiance of citizen’s right to be heard on the part of government agencies not only violates First Amendment rights but works to destroy the general public’s trust in fair and equal treatment under the laws that govern us as a people.

Implore you to acknowledge the respective Department’s responsibility to prioritize the citizen’s rights to know fully about and be effectively involved in all decisions of your respective departments in regard to the Sandpiper project. This has not been our experience with your departments to date. We respectfully resubmit our standing request to meet with the Commissioner of the Department of Commerce and the Executive Secretary of the Public Utilities Commission and department staff with the intent to find ways to improve the public’s overall perception of both the process of pipeline permit review and the manner in which the public is allowed to be fully involved in important government decisions the effect their lives.

This concludes the comments and FOH thanks you and the Department of Commerce for considering our concerns, we look forward to opportunities to fully participate in the remainder of the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Smith". The signature is fluid and cursive, with a large initial "R" and "S".

Richard Smith, President  
Friends of the Headwaters





May 29, 2014

Mr. Larry Hartman, Environmental Review Manager  
 Energy Environmental Review and Analysis (EERA)  
 Minnesota Department of Commerce  
 85 7th Place East, Suite 500  
 St. Paul, MN 55101-2198

Dear Mr. Hartman,

Regarding Public Utilities Commission (PUC) Docket No. PL9/PPL-13-474:

Please find attached our supplemental comments to be added to our position paper dated April 2, 2014 concerning the Enbridge/North Dakota Pipeline Company, LLC Sandpiper pipeline request for a proposed southern corridor route across northern Minnesota from Grand Forks, ND to Superior, WI.

The Friends of the Headwaters oppose this current projected route. You, the DOC and the Public Utility Commissioners will find further reasoning for our opposition and our proposal for an alternate route in the attached documents.

Friends of the Headwaters requests these documents be posted to the eDocket website as soon as possible.

Writing for the members of Friends of the Headwaters I thank you for your attention to these documents and for your attention to our concerns for the welfare and quality of our lands, waters and lives in the Headwaters Country.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Smith".

Richard Smith  
 President  
 Friends of the Headwaters

P.O. Box 583, Park Rapids, MN 56470  
 mnfriendsoftheheadwaters@gmail.com  
 facebook.com/savemississippiheadwaters  
 www.friendsoftheheadwaters.org

**SUPPLEMENTAL COMMENTS TO POSITION PAPER DATED 4/2/2014  
REGARDING THE ENBRIDGE/NORTH DAKOTA PIPELINE COMPANY (NDPC) LLC  
SANDPIPER PIPELINE PROJECT**

Public Utilities Commission (PUC) Docket Number: PL-6668/PPL-13-474

May 29, 2014

Prepared by  
Richard Smith  
Friends of the Headwaters  
P.O. Box 583  
Park Rapids, MN 56470

**TO REVIEW:**

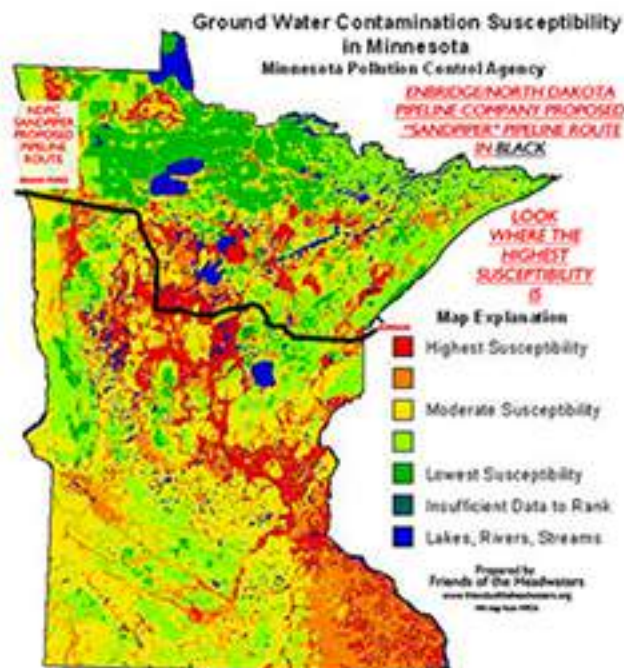
*Friends of the Headwaters* opposes the Enbridge/NDPC Sandpiper pipeline as currently projected to cross Minnesota's lake country from Grand Forks, ND to Superior, WI.

We believe Enbridge/NDPC's proposed "southern corridor" will NOT protect the high quality waters and other natural resources along this route.

*Friends of the Headwaters* also believes Enbridge intends to proliferate another multiple pipeline corridor with their southern route proposal. Enbridge presented just that in an investor conference held April 2, 2014 in New York City.



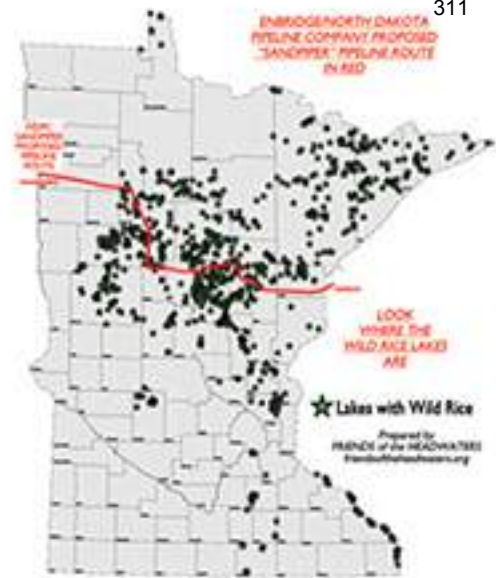
We believe Enbridge/NDPC could not have chosen a worse route as evidenced by the maps below.



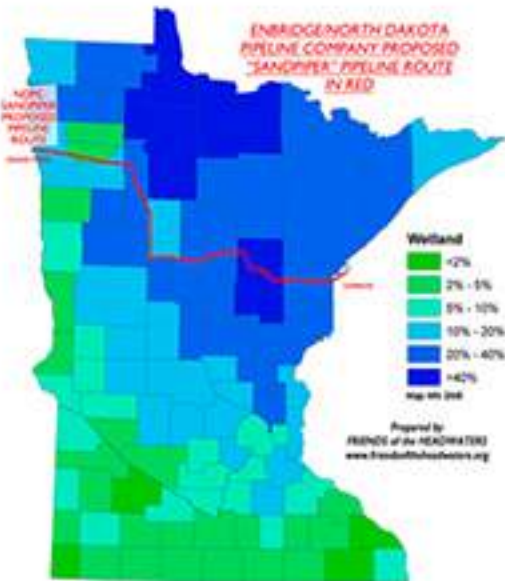
**AT RISK: MINNESOTA'S**

- CLEAREST AND CLEANEST LAKES
- GROUND WATER AQUIFERS
- WILD RICE LAKES
- WETLANDS
- MOST SENSITIVE SOILS TO SPILLS
- DIVERSITY OF VEGETATION
- SENSITIVE ECOLOGICAL ZONES
- THE LAKE SUPERIOR BASIN
- HIGH VALUE RECREATIONAL AND RESIDENTIAL WATERS

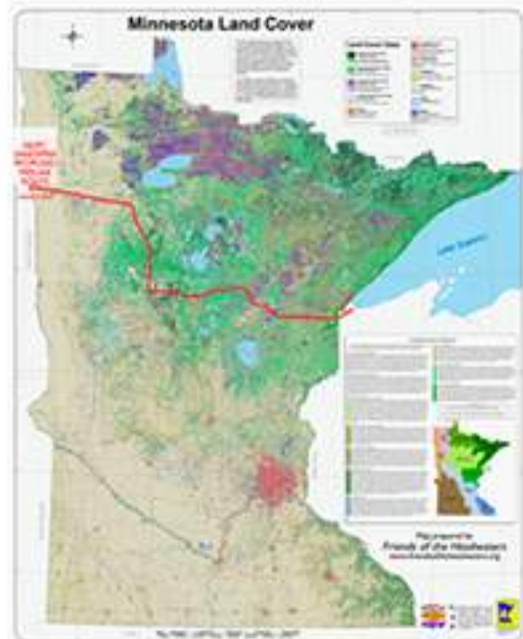
\$342 million annual revenue from fishing  
 \$4.3 billion annual retail sales hunting, fishing, wildlife watching  
 \$2 billion water-influenced properties in Hubbard County alone.



**ENBRIDGE/NDPC COULD NOT HAVE PICKED A WORSE ROUTE.**



**Class V Sensitivity**

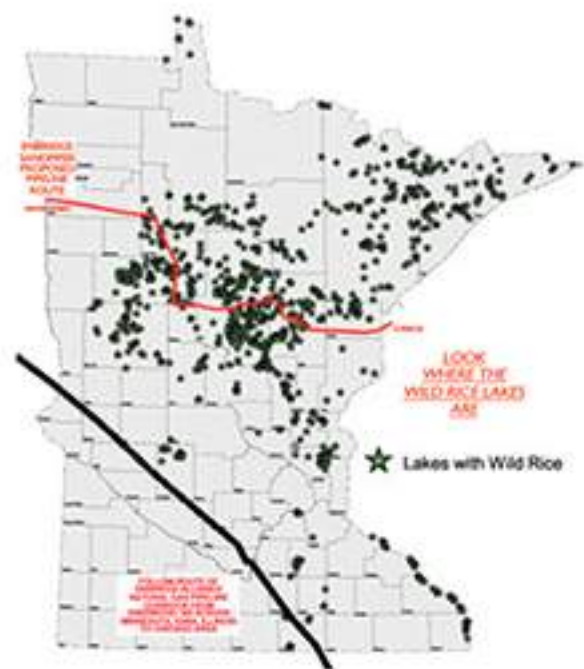
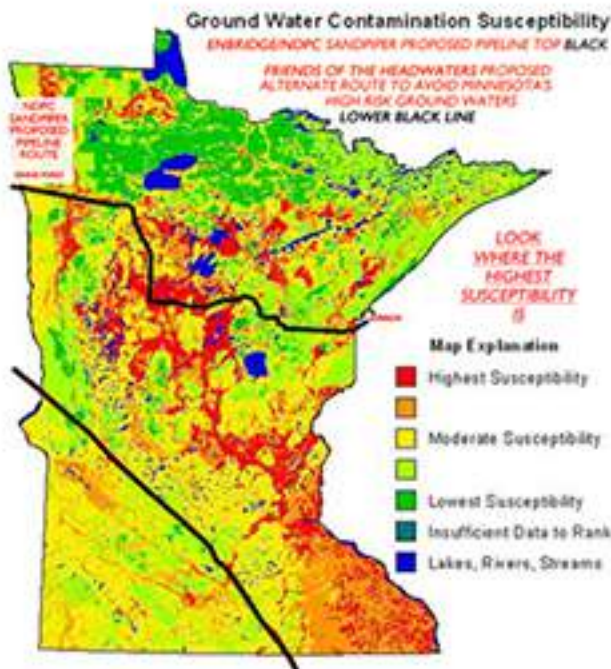
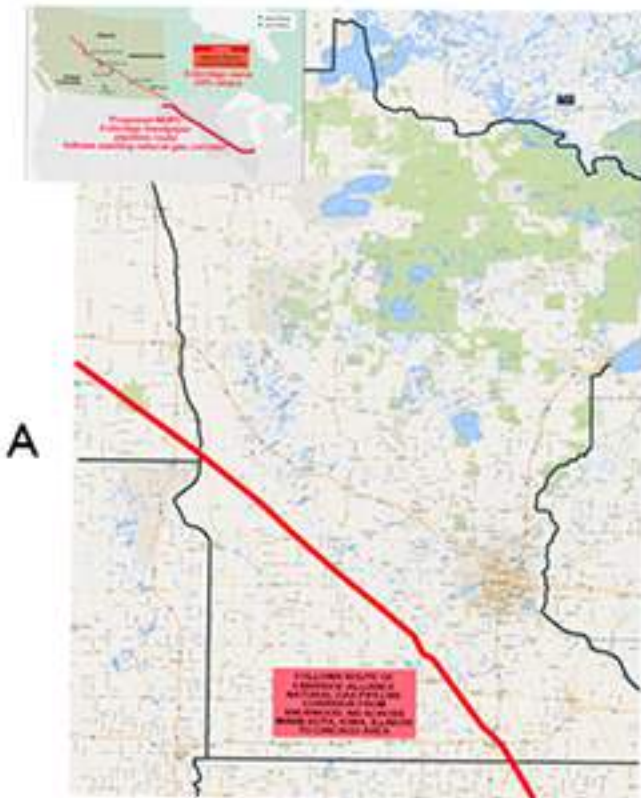


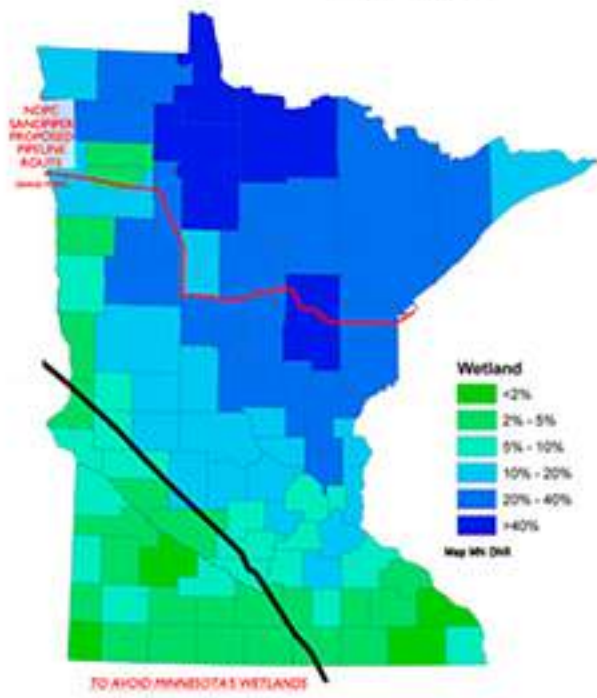
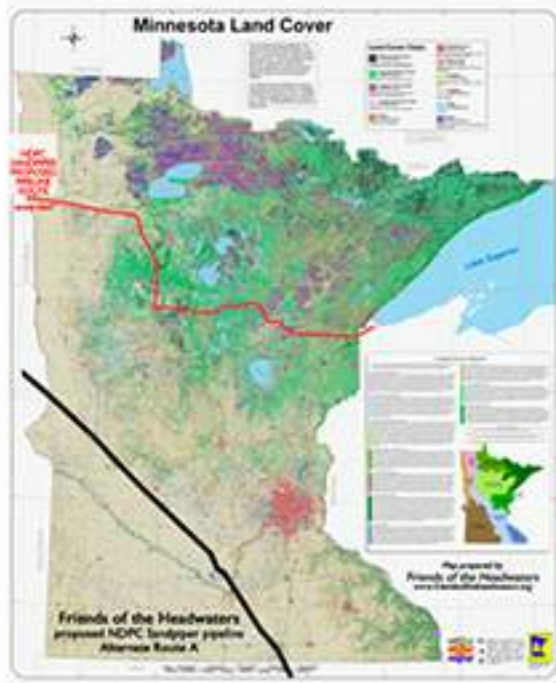
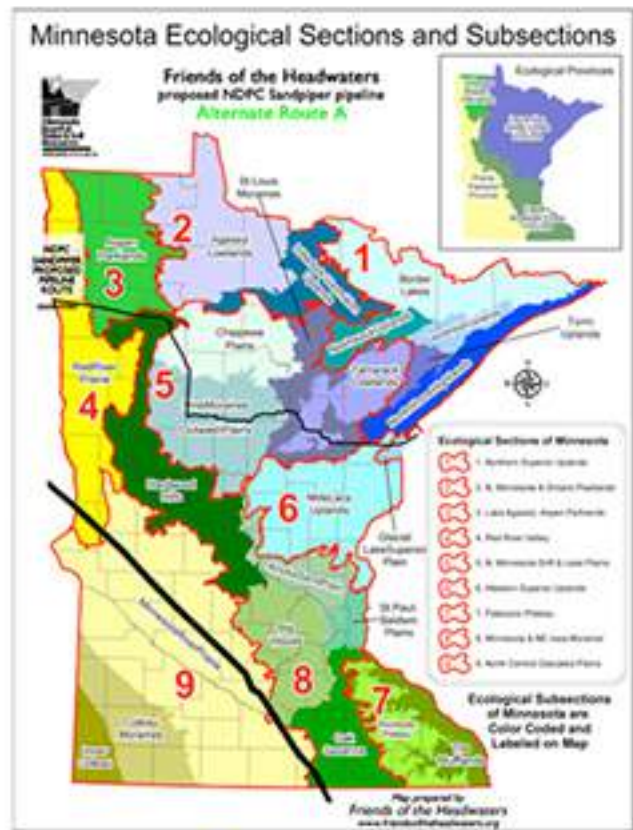
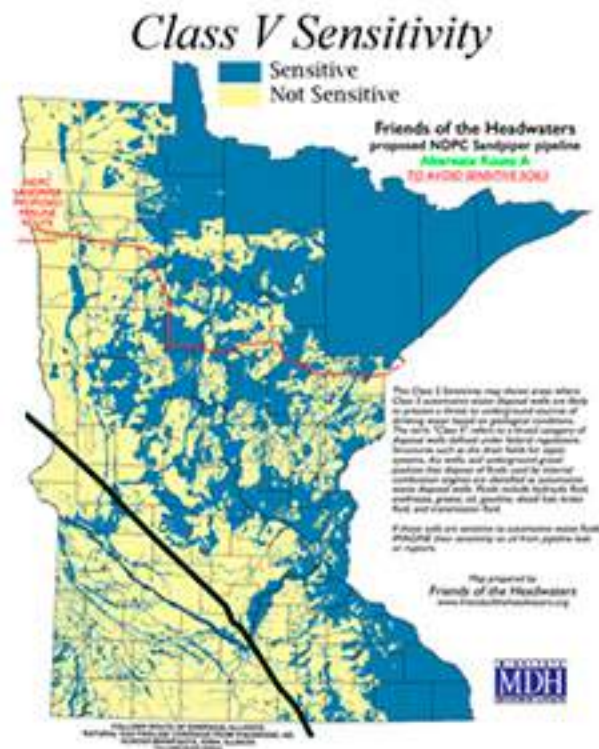
Given the high risk factors of Enbridge/NDPC's proposed Sandpiper 'southern corridor' route **FRIENDS of the HEADWATERS** has proposed a true 'southern corridor' across Minnesota which eliminates the potential for spills and damage to the state's most environmentally sensitive lands and waters.

**FRIENDS of the HEADWATERS** Alternate Route A utilizes an existing energy corridor of which Enbridge is a 50% shareholder with Alliance Company of Canada. This corridor originates in Canada and ends west of Chicago. The proposed Enbridge/NDPC pipeline route would intersect this corridor east of Minot, ND at which point NDPC would turn and follow the corridor to Illinois.

Alternate Route A below.

Compare the route risk factors in following maps.

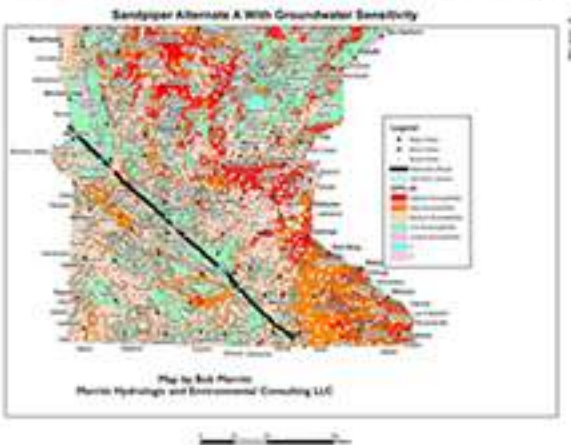




ALT ROUTE A traverses almost exclusively agricultural lands below Minnesota's primary lake country. This area is sparsely populated with mostly small towns among the farmlands.

*Note: Enbridge's Mark Curwin, Senior Director for Strategic Coordination of Major Project Executions in the US, stated their construction preference is to build pipelines across farmland. He made these remarks at a public meeting in Park Rapids on Jan. 29, 2014. Mr. Curwin gave the reasons of better soils, easier construction, easier access, less natural habitat destruction, cheaper and quicker. After construction the farmland can be put back into crop production. Access to leaks and spills is much easier. Winter wetland construction would be at a minimum.*

Two additional maps by Bob Merritt, hydrologist, showing Alternate Route A in better detail.



Minnesota still gets to keep jobs the construction will provide as well as North Dakota plus Iowa and Illinois.

Although the route does not end in Superior, it still ties into the existing Enbridge system in Illinois with routing options to Michigan and Ontario that avoid our greatest freshwater lakes of Lake Superior and the Mackinac Straits of Lakes Michigan and Huron.



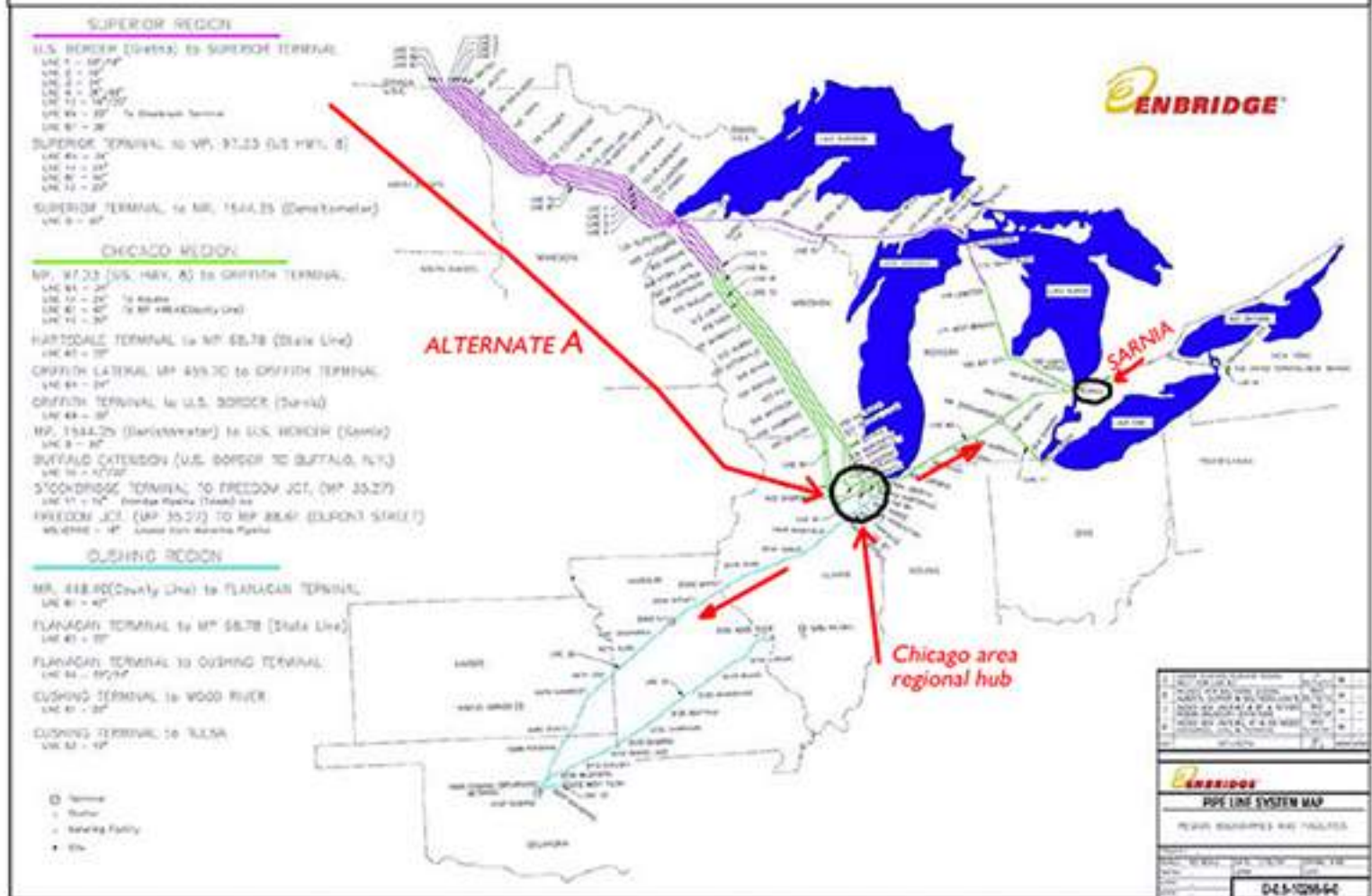
Since it's an existing corridor the company should have access to the mapping previously done for the pipeline already there. ALT ROUTE A also intersects pipelines in southern Minnesota owned and operated by other companies which provide the option of re-routing Bakken crude to the refineries in Rosemont and Saint Paul Park in the south Twin Cities Metro.

The Illinois Hub also allows Enbridge access to its pipelines to Oklahoma and points south.



The *FRIENDS of the HEADWATERS* disputes Enbridge/NDPC's contention that the Sandpiper must end in Superior, Wisconsin. Enbridge has provided no rationale for the route ending in Superior other than "We want it. It connects to our existing system in Superior." The Alternate Route A proposed by *FRIENDS of the HEADWATERS* also connects to their existing system hub near Chicago, Illinois. It does not prevent Enbridge from then transporting the Bakken crude either south to Oklahoma and the Gulf Coast nor across Illinois, Indiana, Michigan and across the border to Sarnia, Ontario, Canada on their existing system.

Figure 7853.0510-2  
Pipeline System Map



Alternate Route A already fits into their existing pipeline corridor system as evidenced by the map at right. Alternate Route A also appears to be a more direct route from the North Dakota Bakken Oil Fields to the primary energy markets of the US Midwest.

Friends of the Headwaters believes the citizens of Minnesota have the right to determine the route parameters of this pipeline corridor, not Enbridge/NDPC. The considerations of the Sandpiper pipeline and the Line 3 Rebuild proposed to run alongside the Sandpiper should not be dictated to the citizens of Minnesota by the company. The company already has too many pipelines crossing Minnesota's most valuable waters and lands.

The cumulative risk of adding additional lines to this region is too high to have the routing parameters set by what Enbridge 'wants'. They should not be allowed to frame the debate on this issue. The citizens of Minnesota and this state's governing and regulatory agencies need to reject this framing by Enbridge/NDPC



and reframe the discussion regarding the need and route of the proposed Sandpiper pipeline as what is beneficial to Minnesota, its people, its communities and its natural resources. Until Enbridge/NDPC adequately provides a detailed explanation for demanding why the Sandpiper pipeline must end in Superior, Wisconsin, *Friends of the Headwaters* believes all alternative routes must be given full consideration, even those proposing a system overhaul of how and where Enbridge wants to cross the state.

If Enbridge/NDPC were truly committed to protecting our lakes, rivers, wetlands, aquifers and lands as they publically state they are, then prove it by not just giving Minnesotans statistics about how safe their pipelines are (their history says otherwise), but by actually moving their proposed route to the lowest risk part of the state as portrayed on the previously presented illustrated maps.

Costs should not be a factor. After all, once the Sandpiper is constructed, 375,000 barrels of oil will pass through it daily. At the current world price for a barrel of oil that amounts to \$40 million dollars per day or \$14.6 billion dollars annually. Even though Enbridge is charging a fee to move the amount of oil, it should not take too many years to recoup their construction costs. Plus it appears from the map below the company has plans to expand the pipeline system through Wisconsin. The money allocated for that extension could easily be applied to the extra construction costs of building Alternate Route A.



Since the company is adamant about Superior as a destination for the Bakken crude, perhaps this proposed extension in Wisconsin could be used to move the oil from the end of Alternative Route A back north to Superior.

Enbridge has ambitious expansion plans not just in Minnesota but nationally it appears.



If their intentions are to expand rapidly towards the southern U.S. Alternative Route A would conform to those expansion plans more directly than their current proposed Sandpiper corridor.



These routes can be connected back to Superior along existing energy corridors.

**ALTERNATE ROUTE "C" as previously proposed in Position Paper of 4/2/2014**

West of Grand Forks near Larimore the Sandpiper would turn south following either railroad easements or road easements south-southeast down the Red River Vally, crossing the Red River near Wahpeton, ND and continuing along MN Hgy 9 until it intersects an existing pipeline corridor owned by the Magellan Company. The Sandpiper follows this corridor until its intersection with the MinnCan pipeline corridor at which point it follows this corridor to the Flint Hills and Saint Paul Park refineries and pipeline system southeast of the Twin Cities Metro area. Optionally the route could turn south from Enbridge/NDPC's proposed pumping station near Lakota, ND.

Route C bypasses Minnesota's sensitive lands and waters and gives Enbridge the option of two routes back to Superior. They can use an existing pipeline corridor along I35 to Duluth whereupon they would intersect their northern corridor and can turn east to Superior. Or they can use another existing pipeline corridor, the Magellan straight east into Wisconsin where that line intersects the Enbridge system in central Wisconsin. At that point Enbridge can use their proposed expansion line to move the oil back to Superior or down to Illinois.



MAP APPENDIX

**Wisconsin Petroleum Pipelines**



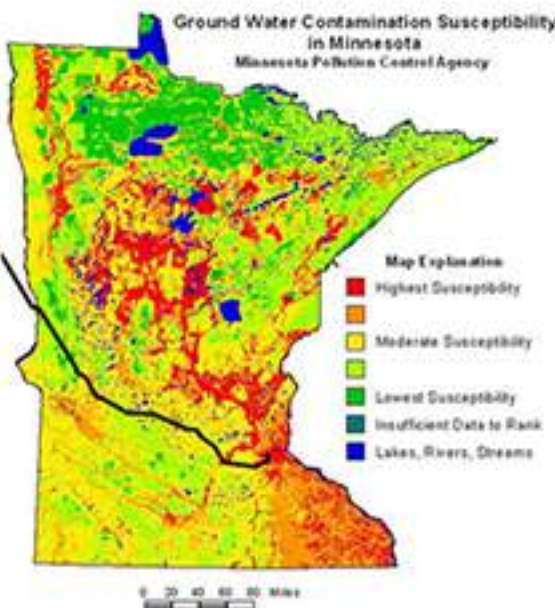
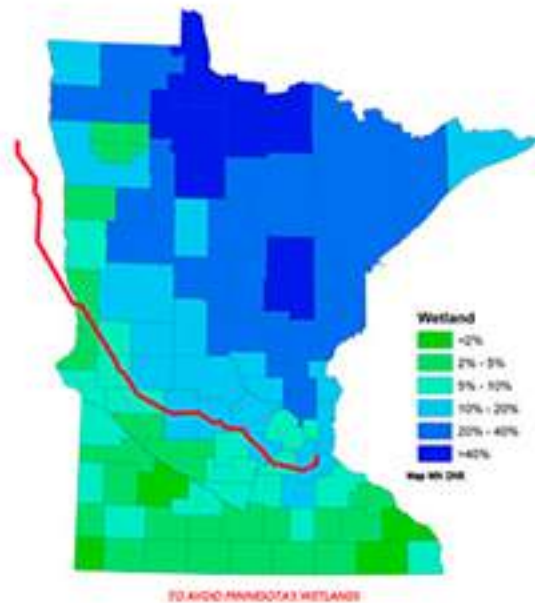
**Friends of the Headwaters does question how excited the people of Wisconsin might be about new pipelines.**

**Pipeline builder to pay forfeiture**  
 Enbridge Energy Partners agreed to pay \$1.1 million to settle claims that the company violated environmental regulations in connection with the construction of an oil pipeline spanning Wisconsin.

Source: Environmental News Service  
 SAVID ARONSON's Environmental News Service



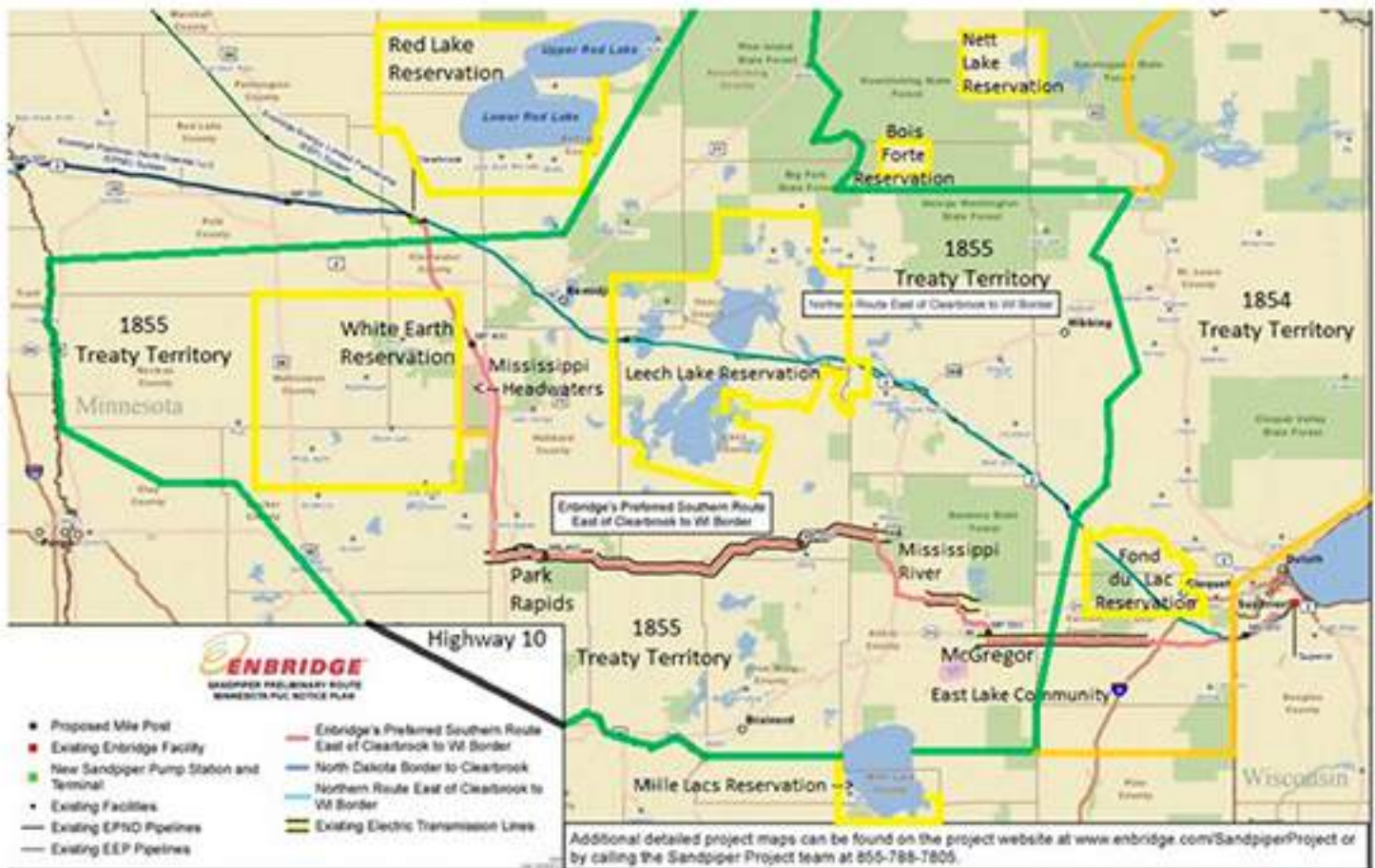
Although these alternate routes avoid the high risk environmental lands and waters of the state as exhibited in the maps below, they do traverse areas of higher population near the Twin Cities. This route does allow a connection along existing pipeline corridors into western and central Wisconsin to Enbridge's pipeline system in Wisconsin. Enbridge has option to ship oil north back to Superior, WI or south to Chicago hub.



As currently planned with the exception of a few tax dollars and short term construction monies Minnesotans derive no long term benefits from these pipelines and assume all the risks from leaks/spills/ruptures. And eventually these pipelines will leak or break. Enbridge's spill history in Minnesota proves it true.

Friends of the Headwaters therefore recommends to the PUC, DOC and other state agencies that they enforce our MEPA statutes and deny the Certificate of Route permit for the Enbridge/NDPC's proposed Sandpiper pipeline corridor through Minnesota's prime lake country. A perfectly viable, low risk alternative is available south of our best waters.

In summary the *FRIENDS of the HEADWATERS* opposes the Enbridge/NDPC Sandpiper Pipeline route proposal as marked on the map below. What does it say about a company that would neglect to feature the state's most famous river, the Mississippi, on their proposed route map? Perhaps this is evidence of their true concern for Minnesota's valuable and cherished water resources.



Enbridge already has too large a footprint across Minnesota's Headwaters Country.

Too much is at risk, not only with the state's clearest lakes; ground water aquifers; fish and wildlife; wild rice; lake and riverfront homes, businesses, and communities; tourism industry; lands and forests; but there's also Lake Superior.

Does Enbridge's insistence on the pipeline ending at Superior portend a future of shipping oil on the Great Lakes? Ironic that a ship icon just happens to be on the adjacent map.

The people of Minnesota should not allow a Canadian corporation with its North Dakota Pipeline Company US subsidiary to dictate the terms of this project.

The company has yet to explain the need for Superior as the end point. This proposed pipeline route should not proceed without legitimate justification. Said reasoning should not include corporate profits.

*Friends of the Headwaters believes up here a barrel of water IS worth more than a barrel of oil.*



STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John A. Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of  
North Dakota Pipeline Company LLC  
for a *Certificate of Need* for the Sandpiper  
Pipeline Project in Minnesota

*Amended*  
**MOTION FOR COMMENCEMENT  
OF ENVIRONMENTAL IMPACT  
STATEMENT and IDENTIFICATION  
OF RESPONSIBLE GOVERNMENT  
UNIT and ENGINEERING FIRM(S)**

To the above-named Commission:

Pursuant to the decision of the Minnesota Court of Appeals, the White Earth Band of Ojibwe (White Earth) hereby requests that the an Environmental Impact Statement (EIS) for assessment of the proposed Sandpiper Pipeline in the proceedings for a Certificate of Need for the project be commenced. White Earth requests that the Public Utilities Commission (PUC) relinquish its status as the Responsible Government Unit (RGU) and defer to the Environmental Quality Board to identify an RGU. White Earth offers the proposed engineering firms and recommends that requests for proposals be sent to these firms. White Earth requests that an EIS be commenced as soon as practicably possible.

In support of this motion, the White Earth Band of Ojibwe (White Earth) offers the following:

1. On December 15, 2015, the Minnesota Supreme Court declined to hear the petitions for review of the September 14, 2015 decision of the Minnesota Court of Appeals filed by the Minnesota Department of Commerce and the Applicant, North Dakota Pipeline Company, LLC. The Court of Appeals determined that an EIS must be

completed prior to the issuance of a Certificate of Need for the proposed Sandpiper Pipeline. White Earth requests that the EIS begin as soon as possible.

2. White Earth requests that the PUC relinquish its status as the RGU, and defer to the EQB to identify the RGU.
3. White Earth strongly objects to the PUC serving in the role of the RGU, as it is a conflict of interest given its relationship to the Department of Commerce and because of its approval of the prior environmental review completed by the Department of Commerce which was determined to be inadequate by the Court of Appeals.
4. White Earth recommends that the EQB designate the Minnesota Pollution Control Agency or the Minnesota Department of Natural Resources as the RGU because of the particular expertise of these agencies and the independence and objectivity of these agencies in the present proceedings.
5. White Earth requests that the RGU appoint it as a cooperating agency because White Earth has expertise in cultural, historical and environmental matters that directly relate to the pipeline corridor preferred by the North Dakota Pipeline Company and Enbridge; and because White Earth is able to identify in a timely manner significant issues in which the Applicant's proposed route will impact the human and natural environment.<sup>1</sup>
6. White Earth recommends that the RGU ensure that Exponent and Battelle, the environmental firms that completed the EIS for the Keystone XL Pipeline, receive

---

<sup>1</sup> See, e.g., 42 U.S.C. §§ 4331(a), 4332(2) (provisions of NEPA which mandate cooperation between the RGU and State and local governments, and other agencies with jurisdiction or special expertise in consideration of the factors provided).

RFPs for completion of the EIS in this case. Because of the complexity of the proposed projects (Sandpiper and Line 3), the additional concerns regarding abandonment of the existing Line 3, and the Commission's orders that the cumulative impacts of the two projects be considered in a single environmental review,<sup>2</sup> White Earth requests that the Commission and the RGU weigh heavily the experience of Exponent and Battelle, the engineering and environmental firms that completed the EIS for the Keystone XL Pipeline.

7. White Earth's request to commence an EIS as soon as possible is consistent not only with the decisions of the Court of Appeals and the Supreme Court, but with the position taken by the Applicant and also by Commissioner Rothman of the Department of Commerce. Additionally, many of the party intervenors have also requested that an EIS be completed, including Honor the Earth, Friends of the Headwaters, Carlton County Land Stewards, and the Sierra Club. The Commission referred both projects for a combined EIS at its meeting on December 17, 2015, subsequent to the initial filing of this motion.

The White Earth Band of Ojibwe respectfully requests that the Public Utilities Commission refer the Sandpiper and Line 3 Applications for commencement of an EIS as soon as possible and defer to the Environmental Quality Board to designate the RGU. The White Earth Band of Ojibwe offers the the Minnesota Pollution Control Agency or Minnesota Department of Natural Resources as appropriate RGUs; requests that the RGU appoint the White Earth Band of Ojibwe as a cooperating agency; and requests that the

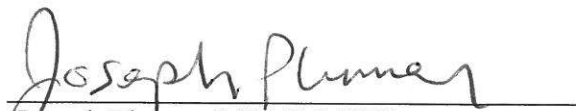
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<sup>2</sup> Order Granting Certificate of Need with Conditions dated August 3, 2015; decision of the Commission at its December 17, 2015 meeting that Sandpiper and Line 3 should both be considered in an EIS.

RGU ensure that Exponent and/or Battelle, the environmental and engineering firms that completed the EIS for the Keystone XL Pipeline, receive RFPs for the EIS.

Respectfully submitted,

Dated: 12/21/15

  
Joseph Plumer (MN #164859)  
Attorney for White Earth Band of Ojibwe  
P.O. Box 418  
White Earth, MN 56591  
Telephone: (218) 983-3285  
Facsimile: (218) 983-3269



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### Document Upload Confirmation

#### Submission Information

**Submission Number:** 201512-116560  
**Submission Date/Time:** 12/16/2015 03:41 PM

#### Filer Information

**Filer:** Plumer, Joseph  
**Company:** White Earth Band of Ojibwe  
**Email:** joep@whiteearth.com  
**Phone Number:** 218-983-3285

#### Document Information

**Document Date:** 12/16/2015  
**Document Type:** Motion  
**On Behalf Of:** White Earth Band of Ojibwe

#### Service List Information

Docket #	List Name
13-473	OFF_SL_13-473_Official

#### Existing Dockets Information

Related Industry	Year	Number
Energy	13	473

#### Uploaded Documents Information

Selected Document	Classification	Additional Information
Motion 12-16-15.pdf	Public	

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Barnett	David	daveb@uanet.org	United Association of Journeymen & Apprentices	Electronic Service	No
Best	Erik	erik.best@riotinto.com	Kennecott Exploration Company	Electronic Service	No
Bibeau	Frank	frankbibeau@gmail.com	Honor the Earth	Electronic Service	No
Blackburn	Paul	paul@paulblackburn.net	N/A	Electronic Service	No
Boardman	Ellen	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	Electronic Service	No
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson Byron	Electronic Service	No
Cote	Michelle	michelle.cote@co.polk.mn.us	Polk County Property Records	Electronic Service	No
Currie	Leigh	lcurrie@mncenter.org	Minnesota Center for Environmental Advocacy	Electronic Service	No
Doneen	Randall	randall.doneen@state.mn.us	Department of Natural Resources	Electronic Service	No
Drawz	John E.	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Erlinder	Peter	proferlinder@gmail.com	International Humanitarian Law Institute	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	No
Gasele	John R.	kgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	Electronic Service	No
Gerber	Benjamin	bgerber@mnchamber.com	Minnesota Chamber of Commerce	Electronic Service	No
Gibbons	Andrew	andrew.gibbons@stinson.com	Stinson Leonard Street	Electronic Service	No
Godfread	Jon	Jon@ndchamber.com	Greater North Dakota Chamber	Electronic Service	No
Gratz	Emerald	emerald.gratz@state.mn.us	Office of Administrative Hearings	Electronic Service	No
Hassler	Lowell	lhassler@blm.gov	BLM Bureau Land Management	Electronic Service	No
Herauf	Helene	Laney@ndchamber.com	Greater North Dakota Chamber	Electronic Service	No
Hoffman	Kathryn	khoffman@mncenter.org	Minnesota Center for Environmental Advocacy	Electronic Service	No

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Hornstein	Frank	Rep.Frank.Hornstein@house.mn	N/A	Electronic Service	No
Jensen	Linda	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Jensen	Patrice	patrice.jensen@state.mn.us	MN Pollution Control Agency	Electronic Service	No
Kitze Collins	Rachel	rakitzeollins@locklaw.com	Lockridge Grindal Nauen PLLP	Electronic Service	No
Kromar	Karen	karen.kromar@state.mn.us	MN Pollution Control Agency	Electronic Service	No
Lindell	John	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Lipman	Eric	eric.lipman@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Madsen	Peter	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Mahlberg	Patrick	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Mattison	Willis	mattison@arvig.net	Friends of the Headwaters and self	Electronic Service	No
Meloy	Brian	brian.meloy@stinson.com	Stinson, Leonard, Street LLP	Electronic Service	No
Miller	Jessica	Jessica.Miller@whiteearth-nsn.gov	White Earth Band of Ojibwe	Electronic Service	No
Nauen	Charles	cnnauen@locklaw.com	Lockridge Grindal Nauen	Electronic Service	No
Patton	Bob	bob.patton@state.mn.us	MN Department of Agriculture	Electronic Service	No
Plumer	Joseph	joep@whiteearth.com	White Earth Band of Ojibwe	Electronic Service	No
Pranis	Kevin	kpranis@liunagroc.com	Laborers' District Council of MN and ND	Electronic Service	No
Roesler	Neil	nroesler@vogellaw.com	Vogel Law Firm	Electronic Service	No
Sanoski	Jeremy	jeremy.sanoski@state.mn.us	MN Pollution Control Agency	Electronic Service	No
Schoneberger	Robert	bob.schoneberger@unitedpiping.us	United Piping Inc	Electronic Service	No
Schrenzel	Jamie	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	Electronic Service	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
Shaffer	David	david.shaffer@startribune.com	N/A	Electronic Service	No
Shore	Eileen	eileenshore@outlook.com	Eileen Shore	Electronic Service	No
Sierks	Bill	bill.sierks@state.mn.us	State of MN - MPCA	Electronic Service	No
Smith	Richard	grizrs615@gmail.com	Friends of the Headwaters	Electronic Service	No
Starns	Byron E.	byron.starns@stinson.com	Stinson Leonard Street LLP	Electronic Service	No
Thompson	Randy V.	rthompson@nmtlaw.com	Nolan, Thompson & Leighton	Electronic Service	No
Titus	Kirk	kirk.titus@crowwing.us	Crow Wing County Land Services	Electronic Service	No
Von Korff	Gerald	jvonkorff@rinkenoonan.com	Rinke Noonan	Electronic Service	No
Walli	Kevin	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	Electronic Service	No
Watts	James	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	Electronic Service	No
Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Zoll	David	djzoll@locklaw.com	Lockridge Grindal Nauen PLLP	Electronic Service	No

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**Paper Service**

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Coda II	Vanta E.	Avon Township	1200 Port Terminal Drive, Duluth, MN - 55802-2609	Paper Service	No
Hendrix	Danny	Pipeliners Union 798	PO Box 470798, Tulsa, OK - 74147-0798	Paper Service	No
Le Dain	Eric	Enerplus Resources (USA) Corporation	US Bank Tower, Suite 2200, 950 - 17'h Street, Denver, CO - 80202-2805	Paper Service	No



## White Earth Reservation Tribal Council

P.O. Box 418  
 White Earth, Minnesota 56591  
 Tel. (218) 983-3285  
 Fax (218) 983-3641

CHAIRWOMAN  
 Erma J. Vizenor

June 1, 2015

SECRETARY-TREASURER  
 Tara Mason

Beverly Jones Heydinger, Chair  
 Minnesota Public Utilities Commission  
 121 7<sup>th</sup> Place East, Suite 350  
 Saint Paul, MN 55101-2147

DISTRICT I  
 Steven "Punky" Clark

DISTRICT II  
 Kathy Goodwin

Re: Certificate of Need for the Sandpiper Pipeline Project

DISTRICT III  
 Kenneth Bevins

Dear Chairwoman Heydinger:

The White Earth Band of Ojibwe requests that the Public Utilities Commission postpone its vote on whether to adopt Administrative Law Judge Eric Lipman's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation; and on whether to refer this matter for proceedings with respect to Enbridge's application for a route permit. The White Earth Band of Ojibwe believes that a postponement of this vote is necessary in order for the State of Minnesota to engage in government-to-government consultation with the White Earth Band of Ojibwe and the other Tribal Nations potentially impacted by the Sandpiper Pipeline project. To date, government-to-government consultation required between state agencies and Tribal Nations pursuant to Governor Dayton's Executive Order 13-10 has not occurred on this matter, nor was there any mechanism for consultation in the Administrative Hearing process on the Certificate of Need.

The White Earth Band of Ojibwe intervened in the permit proceedings regarding the Sandpiper Pipeline because of its concern that the project as proposed poses a significant risk to the environment on and near the White Earth Reservation, as well as within the 1855 treaty-ceded territory where White Earth members and other successors in interest to the signatories of the Treaty possess retained and reserved usufructuary use rights that are threatened by this project. The White Earth Band of Ojibwe has repeatedly noted its concern that the project as proposed poses a significant risk, in particular, to wild rice, a plant of supreme cultural significance to the people of White Earth and the other Ojibwe Tribes of Minnesota.

The White Earth Band of Ojibwe requested, and received assurances, that a public meeting would be held on the White Earth Reservation to permit its members to participate in the proceedings. None of the public hearings were held on White Earth. The White Earth Band of Ojibwe is holding a Public Hearing in the Rice Lake Community on June 4, 2015 at 5:00 p.m., the purpose of which is to collect information from White Earth members and experts regarding the proposed Sandpiper Pipeline. The Mille Lacs Band of Ojibwe will hold a Public Hearing in its East Lake Community Center on June 5, 2015 at 10:00 a.m. for the same purpose. The White Earth Band of Ojibwe requests that the Public Utilities Commission postpone its vote of June 5, 2015 until after the Commission has had an opportunity to review the hearing reports from these hearings.

The White Earth Band of Ojibwe expects that the hearing report will reflect valuable legal and environmental information that the Public Utilities Commission will benefit from prior to making any final decisions regarding the proposed Sandpiper Pipeline project. The White Earth Band of Ojibwe invites and encourages members of the Public Utilities Commission to attend the hearings on June 4 and June 5, 2015.

The purpose of the hearing is to collect information from White Earth Band Members and experts regarding:

- (1) Concerns regarding oil spills and the potential risks to surface and ground water on or near the White Earth Reservation, lands held in federal trust status for the White Earth Band of Ojibwe, and lands within the 1855 Treaty-ceded territory;
- (2) Concerns regarding the self-sufficiency of individual Band members and cultural practices, such as harvesting wild rice within the White Earth Reservation and the 1855 Treaty-ceded territory;
- (3) The implications of the lack of consultation with the White Earth Band of Ojibwe;
- (4) The legal implications of the lack of consultation between Enbridge and the White Earth Band of Ojibwe's Historic Preservation Office regarding the identification of lands along the pipeline route of historic, archeological, and cultural significance;
- (5) The potential legal involvement of the Federal Government: First, whether the Department of the Interior is properly carrying out its trust responsibility with regard to federal and tribal land; Second, whether the Environmental Protection Agency should conduct an Environmental Impact Statement (EIS) to assess the safety of the Sandpiper Pipeline project to lands and waters important to Tribal Nations and federal land; and Third, whether the U.S. Army Corps of Engineers should conduct an EIS to assess the potential impact of the Sandpiper Pipeline project to wetlands and waters under its jurisdiction.

Respectfully, the White Earth Band of Ojibwe again urges the Public Utilities Commission to postpone its vote scheduled on the Sandpiper Pipeline project scheduled for June 5, 2015 until such time as the members of the Public Utilities Commission have had an opportunity to consider the views of the Native Americans who will be most impacted by potential spills and

the construction of this project, and have had an opportunity to study the report on the hearing on June 4, 2015, which will be provided to the Commission immediately upon completion.

Again, the White Earth Band of Ojibwe encourages and warmly invites members of the Public Utilities Commission to attend the hearing on June 4, 2015 and hear the perspective of tribal members potentially impacted by the proposed route, as well as national experts.

Sincerely,



Erma J. Vizenor  
Chairwoman

cc: Commissioner Lange  
Commissioner Lipschultz  
Commissioner Tuma  
Commissioner Wergin  
Governor Mark Dayton  
Congressman Collin Peterson  
Senator Amy Klobuchar  
Senator Al Franken

**Department of Commerce brief to PUC with reasoning on elimination of “System Alternatives” based on applicant’s definition of project purpose:**

Date: July 16, 2014 EERA Staff: Larry B.

Hartman.....651-539-1839

Deborah R. Pile.....651-539-1837

**“System Alternatives** - A system alternative is an alternate that proposes a different configuration of pipelines for moving oil from the Williston Basin than the applicant’s proposal. It is a wholly separate or independent route from the Applicant’s proposed route and is, in essence, a different project than the one proposed by the applicant. Enbridge is requesting a route permit to transport oil produced in North Dakota to the terminals in Clearbrook, Minnesota, and Superior, Wisconsin. Minnesota Rule 7852.0100, subpart 31, defines a route as “the proposed location of a pipeline between two end points.” In this docket, Enbridge has requested a route from the North Dakota border to Clearbrook and from Clearbrook to Superior. Thus, the project, for route permit application purposes, is defined by these three points. However, eight alternatives proposed during the comment period do not connect with one or more of these three points (Table 1 and Figure 1). The proposed system alternatives include routing the pipeline far north or far south of the applicant’s proposed route. None of the system alternatives would connect to the new Clearbrook terminal. Three of the system alternatives do not connect into Enbridge’s Superior Terminal. Because the proposed system alternatives are not alternative routes for meeting the purpose of the project as identified in the permit application, EERA does not believe that these alternatives are appropriate for further consideration.”

NEPA requirement for Scientific Integrity:

**Sec. 1502.24 Methodology and scientific accuracy.**

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

**Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.**

- (a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals

which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

### **Sec. 1508.25 Scope.**

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
  - (i) Automatically trigger other actions which may require environmental impact statements.
  - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
  - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

4. No action alternative.
5. Other reasonable courses of actions.
6. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

USACOE has authority to proceed with Environmental Review in spite of applicant's request to suspend:

**Sec. 1508.23 Proposal.**

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.



## “REGULATORY CAPTURE”: SOURCES AND SOLUTIONS

Scott Hempling\*

*... [T]he Commission has claimed to be the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.<sup>1</sup>*

\* \* \*

As an advisor, practitioner, and expert witness in the field of public utility regulation, I have observed policymakers paradoxically concerned that using their powers risks losing their powers. Here are two examples.

**“We’ll lose our jobs”:** In one state, a major electric utility repeatedly resists the agency’s orders by invoking federal preemption, often groundlessly. The utility wanted its rights and obligations determined by the Federal Energy Regulatory Commission (where the state agency was a mere intervenor) rather than by the state agency (which had the power to issue and enforce orders). Under a proper reading of the federal-state jurisdictional relationship, the state agency is parent setting the expectations; while the utility wanted to drag the agency to FERC for family counseling.

In a competitive market, an unresponsive seller loses its customer. A utility has a monopoly franchise, but it comes with no lifetime lock. Why not let other, more responsive companies compete for the role? Some states have done exactly that: Hawaii, Maine, Oregon, and Vermont have transferred the traditional utility’s energy efficiency functions to an independent, commission-regulated entity, selected competitively. The risk of losing a century of steady income would jolt any incumbent into responsiveness.

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\* Scott Hempling is an advisor to public utility regulatory agencies, and an adjunct professor at Georgetown University Law Center, teaching courses on public utility law and regulatory litigation. He is the author of *REGULATING PUBLIC UTILITY PERFORMANCE: THE LAW OF MARKET STRUCTURE, PRICING AND JURISDICTION* (American Bar Association 2013) and *PRESIDE OR LEAD? THE ATTRIBUTES AND ACTIONS OF EFFECTIVE REGULATORS* (2d ed. 2013).

<sup>1</sup> *Scenic Hudson Pres. Conference v. Fed. Power Comm’n*, 354 F.2d 608, 620 (2d Cir. 1965) (referring to the Federal Power Commission), *cert. denied sub nom.*, *Consolidated Edison Co. v. Scenic Hudson Preservation Conference*, 384 U.S. 941 (1966).

But this agency reaction to this possibility was immediately and emphatically negative: “If we tried that, we’d all lose our jobs.” Refraining from picking the best company for a job for fear of losing your job—that’s conceding a lot. And note the asymmetry: When a regulated utility is the entity proposing to change the franchisee (such as when it is merging with or being acquired by an out-of-state entity), regulatory commissions routinely approve the transaction, with no fear of losing their jobs. But when the initiator of franchise change is the agency, there is fear of job loss. When the motivation for regulatory decision is job-saving rather than public-serving, we have “regulatory capture.”

**“They’re captured and there’s no rescue”:** Another state suffered from an electric utility’s frequent outages. A legislator I know blamed the state regulatory commission for failing to set standards and punish shortcomings. I suggested he get the commission more support—more staff and expertise, better salaries, more political cover for its tougher decisions. A stronger commission would have more credibility with which to create a culture of performance. That credibility would be even higher if the commission had the option of replacing a non-performing utility.

The legislator objected: “That’s not politically possible. The legislature has no stomach for more spending.” Yet the outage had cost state residents, according to this legislator, hundreds of millions of dollars in lost business and freezer spoilage alone. How was it not “politically possible,” albeit with patient, risk-taking leadership, to spend, say, 5 percent of that amount to reduce the probability of recurrence by half? It’s all from the same pockets—customer pockets. Why give ground to the short-term cost-cutters where spending saves long-term money? In any event, he added, “It’s useless, they’re captured.” Using “capture” as an excuse was itself a form of capture.

From these two examples, conscientious regulators can define “regulatory capture,” recognize its warning signs, and work to resist it.

#### A. *Definition*

“Regulatory capture” is a ringing phrase, too casually used. But because it is a hyperbolic phrase, it is too readily dismissed. With a careful definition, regulatory capture can be anticipated, detected, and resisted.

Regulatory capture does not include illicit acts—financial bribery, threats to deny reappointment, promises of a post-regulatory career. These things all

have occurred, but they are forms of corruption, not capture. Nor is regulatory capture a state of being controlled, where regulators are robots executing commands issued by interest groups.

Regulatory capture is neither corruption nor control. Corruption and control are actions of the regulated entity. Regulatory capture is characterized by the regulator's attitude, not the regulated entity's actions. A regulator is "captured" when he is in a constant state of "being persuaded": persuaded based on a persuader's identity rather than an argument's merits. Regulatory capture is reflected in a surplus of passivity and reactivity, and a deficit of curiosity and creativity. It is evidenced by a body of commission decisions or non-decisions—about resources, procedures, priorities, and policies, where what the regulated entity wants has more influence than what the public interest requires. The active verb "capture" signals an affirmative effort, to take someone captive. But the noun "capture," and the passive verb form "to be captured," signal a state of being. One can enter that state through one's own actions or inactions. One can allow oneself to be captured. One can assist, and sustain, one's own captivity.

If regulatory capture is a state of being, assisted and sustained by the captive, what roles are played by others? Regulatory capture is enabled by those who ignore it, tolerate it, accept it or encourage it: legislators who underfund the commission or restrict its authority, presidents and governors who appoint commissioners unprepared for the job, human resource officials who classify staff jobs and salaries based on decades-old criteria unrelated to current needs, intervenors who treat the agency like a supermarket where they shop for personal needs, and who treat regulatory proceedings like win-loss contests rather than building blocks in a policy edifice. These actions and inactions feed a forest where private interest trees grow tall, while the public's needs stay small.

### *B. Warning Signs*

If to be "captured" is to be in a constant state of being persuaded, by persuader identity rather than merits, what are the warning signs? What are the conditions and practices that contribute to and perpetuate regulatory capture?

***No vision, no priorities:*** In a captured agency, its leaders don't ask the big questions: What products, services and quality standards best serve the public? What price levels are necessary, and sufficient, to support those products, services, and standards? What market structures will yield the desired results?

And within those market structures, what corporate structures and practices will induce executives and employees to produce those results?

Lacking vision and priorities (and a work plan to carry them out), the captured agency over-allocates its resources to processing parties' petitions, while under-allocating resources to pursuing the agency's priorities. This is not necessarily the agency's fault. When legislatures impose statutory deadlines for processing parties' petitioners, while limiting agency funding without regard for its obligations, the result is predictable: The agency's work is dominated by what petitioners want rather than by what the public needs.

An absence of vision leads to deficit of motivation. A captured agency lacks a program of continuous self-improvement: a program that has for each department, department head, and employee a rigorous plan for professional advancement; a program whose resources and momentum are not compromised by the commission's other workload; a program that includes regularly recommending legislative changes to strengthen the agency's ability to improve industry performance.

***Issue-framing by the parties:*** “[D]escription is prescription. If you can get people to see the world as you do, you have unwittingly framed every subsequent choice.”<sup>2</sup> When a regulatory proceeding is initiated by an applicant seeking a government benefit, the applicant's profit motive induces it to frame the issues in pecuniary terms; i.e., what I want rather than what the public interest requires. Where profit is part of the statutory design, this type of positioning is not invalid. But the risk is that the agency fails to reframe the case to focus on its public interest mission.

Private interest framing can induce wrong answers. Robert Frank, a Cornell University economics professor, cites a psychology study done in the 1970s. The subjects had to spin a wheel, then guess what percentage of African countries were members of the United Nations. The subjects assumed the wheel was neutral, but it was rigged: For one group of subjects it always stopped on 10, for the other group it always stopped on 65. On average, the first group guessed that the percentage of African countries in the UN was 25 percent; the second group guessed 45 percent. The irrelevant wheel influenced judgment. The psychologists concluded, in a 1981 paper, that framing a decision appropriately is an “ethically significant act.”<sup>3</sup>

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<sup>2</sup> David Brooks, *Description is Prescription*, N.Y. Times, Nov. 25, 2010 (discussing Leo Tolstoy).

<sup>3</sup> Robert Frank, *The Impact of the Irrelevant*, N.Y. Times, May 29, 2010.

Drafting and filing an application for a government-granted benefit is an exercise in framing—framing a private interest quest (profitability, market share maintenance) as a public interest question (viability, reliability, jobs). As with the wheel-spinning example, this private interest framing inevitably influences regulators' decisions about what problems and solutions gain their attention.

Framing happens so frequently it is easy to miss, especially within agencies that react to others' priorities instead of setting their own. And framing works (for the framer, that is), for three reasons. First, it depends not on deception—which would be detected and criticized—but on emphasis. No one gets sued for framing. Second, every framed proposal has some public interest component; e.g., cost recovery shouldn't lag expenditures, mergers can improve efficiencies, new power plants can avoid blackouts. Unlike the psychologists' wheel, the regulated entity's frame is rarely irrelevant. Third, framing rearranges the agency's priorities, since utility filings tend to trigger statutory deadlines while agency-initiated cases do not.

***Procedures that value positions over perspectives:*** Capture is implicit in how agencies organize their proceedings. In captured agencies, litigating parties emphasize positions over perspectives. The agency invites and rewards this practice by asking “What do you want?” rather than “What do you know?” When hearing orders (the initial orders stating the issues to be decided) merely restate the parties' requests, rather than articulate a public interest purpose, that is evidence of capture. The commission becomes a commercial interest arbitrator at best, a supermarket for private interest shoppers at worst. Policy leadership is missing. In the hearing room, the parties ask each other hours of questions aimed at their own interests. The commissioners and hearing examiners mostly observe, on the mistaken premise that oppositional sparks will light up a public interest path. The parties treat the agency staff as a mediator for short-term settlements rather than as a transmitter of the commission's vision (a real likelihood if there is no vision, as described above). The commission accepts these settlements instead of directing its staff to pursue its vision.

***Low professional expectations:*** In my field of public utilities, the regulatory agencies under-appreciate the need for employee credentials. States require licenses for pedicurists but not for rate case witnesses; regulatory organizations award “certificates” for conference attendance but not for subject matter mastery. Regulated utilities, in contrast, regularly require advanced

credentials for power plant operators, fiscal officials, executive officers—anyone whose hand or pen touches operations, finance, or management.

This difference in credentialing produces, and reinforces, a difference in salaries; leading to a difference in motivation and morale; leading, unremarkably, to a difference in tenure for the talented. They spend their formative years learning on the taxpayer dime, then move to the regulated sector. No one with the power to fix the problem notices or reacts. The “revolving door” then becomes a one-way door: more agency staff move to jobs with the regulated than the other way around. That’s capture. It is neither corruption nor conflict of interest; it is simply the natural economic result of the agency failing to insist on high-quality professionals and pay them their worth.

***External political actions and inactions:*** The opposite of regulatory capture is agency independence. Independence is undermined when interest groups take their case to the governor, who then pressures the agency behind the scenes. Agencies that have a choice: cave, or remind the governor that her influence over sitting commissioners is no greater than any other citizen. The wrong choice is evidence of capture. Also contributing to capture is political distancing for political convenience: when the commission makes the tough calls (e.g., utility service cannot be below-cost-but-high-quality, or shareholder investment cannot be low-risk-but-high-profit), politicians join the protests rather than signal support.

***“What’s good for the company is good for the country”:*** It is common for benefit-seekers to describe their private interests in public interest terms. In the public utility field, the typical applicant for merger approval cites its need to “position itself competitively.” Regulatory agencies sometimes adopt this argument as policy, viewing their regulatory duty as supporting the utility’s competitive interests. The irony of, and market distortion resulting from, issuing government orders to serve a single company’s competitive interest goes unnoticed. There is a difference between (a) keeping a well-performing utility monopoly financially capable of providing its obligatory service, and (b) becoming a volunteer in the utility’s competitive campaigns. When that difference disappears, when “bigger is better” becomes the guide for decisions, the utility’s goals become the commission’s. That’s capture.

\* \* \*

These warning signs are less the capturing actions of regulated entities, and more the capture actions—and inactions—of regulators and their colleagues in other government branches. This makes the term “regulatory capture” both imprecise and inaccurate. The “captured” commission’s cage is not locked and guarded by its enemies; its door is opened and closed by the commission itself.

### *C. Sources*

A common contributor to capture is a regulatory agency’s mistaken view that its purpose is to “balance” the interests of consumers and investors. This understanding of regulation as private interest balancing, so deeply embedded in regulatory conversation, practice, and psyche, has five main problems.

***Ambiguity:*** To claim that one balances interests is to muddle regulation with multiple ambiguities. Which consumers—large or small, industrial or residential, eastern or western, today’s or tomorrow’s? Which consumer interests—low prices or high quality? Which investors—buy-and-hold shareholders, pension funds, hedge funds, short sellers, or bondholders? Which company interests—this year’s profits or next decade’s viability? What time horizon—short-term or long-term? And what do we mean by “balance”? Balance implies equivalence—the precise midpoint between two interests of equal weight. Are the customer-investor weightings exactly equal? At all points in time? Or can they vary from equivalence at any point in time, provided the variations balance over some longer period of time? None of these questions (important to anyone with a stake in regulation) is answered by the phrase “balancing interests.”

***Nearsightedness:*** If a regulated service were merely a commercial transaction affecting only the buyer and seller, then balancing the interests of customers and investors would be a logical regulatory mission (provided we resolved the many ambiguities just discussed). But regulated services are rarely mere bilateral commercial transactions. In the public utility field, regulated companies create, operate, and maintain the infrastructure supporting our economy; the infrastructure that sustains life and its quality (think water shortage, electricity outage, no telephone service, no streetlights, no movies). Utility service also produces the multi-millennial residue of today’s production and consumption decisions: e.g., nuclear waste and carbon emissions from electricity generation, chemical residue from telephone pole treatment, leaks from gas pipelines. The regulatory lens must be both wide-angle and long-distance. Balancing interests misses this point.

***Presumption of conflict:*** A balance presumes two weights in opposition. But the legitimate aims of consumers and suppliers are not in opposition. Viable sellers, satisfied customers, no waste, no free lunch, reasonable prices and reasonable returns—these goals are consistent and mutually reinforcing. High-quality performance and efficient consumption benefit everyone: customers, shareholders, bondholders, workers, and the environment.

Opposition arises only from illegitimate aims: like the cost-causing consumer seeking to shift costs, the shareholder insisting on excess returns. If the regulator rejects the illegitimate aims, the assumption of opposites, and the perceived need to balance opposing interests, go away. But some regulatory fora do the reverse. They embed opposition into procedure, by tolerating private interest pleas that have adverse effects on others. They expect, and allow, parties to position themselves at the poles, paying no penalty for unreasonableness. They encourage these opposing parties to make deals—”settlements” that favor the better-resourced parties, settlements that then are approved by a boxed-in commission. The presumption of conflict embodied in the “balancing” perspectives leads to compromises among private interests rather than advances of the public interest.

***Passivity:*** An agency that balances private interests is presiding rather than leading. Outcomes are defined, and evaluated, by the parties’ desires, not the public’s needs. The forum serves the parties, instead of the parties serving the forum. This passivity leaves the public unserved, because the midpoint of two private interests is but a third private interest.

***Legal looseness:*** Regulatory proceedings are legal proceedings, bounded by statutes and constitutional law that create rights and obligations. The regulatory responsibility is to define the rights and obligations, then protect the rights and enforce the obligations. Balancing private interests diverts attention from the agency’s legal tasks. (Caveat: The occasional statute does contain a balancing-type phrase in its preamble. In that limited context, this legal argument has less force. But even in those situations, the interests requiring balance are the rights and obligations created by statute (which the agency must define), not the self-interests advanced by the parties.)

***The commission-court difference:*** Regulators who prefer to “balance,” who preside rather than lead, liken the regulatory agency to a court and the regulator to a judge. Doing so undermines the agency’s effectiveness. An agency’s purpose derives from its origins. The legislature receives its lawmaking powers from a constitution. The legislature then creates a



commission, delegating to it some substantive slice of its lawmaking powers. That delegation consists of commands and standards; e.g., establish “just and reasonable” rates, ensure “reliable service,” allow mergers if “consistent with the public interest.” Common to these commands and standards is a legislative purpose: make and carry out policy to promote the public interest.

That is not what courts do. A court is not a delegatee of the legislature, making and carrying out policies to promote the public interest. Courts resolve disputes brought by parties, disputes whose boundaries are drawn by the parties’ complaints and answers. Agencies and courts do have commonalities. Both make decisions that bind parties. Both base decisions on evidentiary records created through adversarial truth-testing. Both exercise powers bounded by legislative line-drawing. But courts do not seek problems to solve; they wait for parties’ complaints. In contrast, an agency’s public interest mandate requires it literally to look for trouble. Courts are confined to legal violations, but commissions are compelled to advance the public welfare. Even the narrowest of commission decisions—say, approving or disapproving a special contract between utility and industrial customer—affects a public larger than the parties: Will the low contract price shift costs to other customers or weaken the utility’s finances? Will the lucky buyer’s competitors seek me-too treatment? To what effect?

Like an agency, a court’s decisions can affect non-parties. A class action suit under the civil rights or securities laws, an antitrust suit against a Microsoft, can set policy for a generation. But consider this difference: A judge’s power to act is still defined by, and confined to, the issues stated in the plaintiff’s complaint. For an agency, a petitioner’s filing is stimulation but not limitation. The agency can add issues, combine proceedings, invite other parties, or convert a two-party complaint into multi-party rulemaking, all as the public interest demands.

Given these differences, a regulator that acts like a judge undermines the agency’s effectiveness. He assumes that the parties, their interests, their arguments, and their legal citations comprise the full intellectual universe requiring regulatory attention. This assumption relies on one or more of the following premises, each one wrong: (1) the scatterplot of private interests appearing in a proceeding will display some pattern from which the commission can discern the public interest; (2) the public interest is synonymous with satisfaction of those private interests; (3) the private interests’ evidentiary submissions will produce information sufficient in

relevance and objectivity to discern the public interest; (4) the opportunity for access equals the reality of access (i.e., all possible private interests have hearing room resources sufficient to get the commission's ear); or (5) through the static and friction of private interest opposition, a regulatory "truth" will emerge.

Accepting any of these premises undermines effectiveness, by: (1) inducing intellectual passivity, because the proceeding and the record become party-centric rather than public-centric ("What are the parties seeking?" instead of "How do I advance the public interest?"); (2) imposing the wrong time horizon (the parties' short-term goals rather than the public's long-term needs); (3) reducing the regulator's objectivity (because the regulator learns the issues from parties' arguments rather than impartial sources); (4) distorting the regulator's time management, because as the parties load the record with conversation among themselves (testimony, cross examination, and briefs), procedural law compels the regulator to read every page, leaving insufficient time and mental space to read and think on her own; or (5) substituting private settlements for public interest solutions (regulation, unlike marital dissolutions and fender-benders, requires policymaking, not dispute resolution).

Yet many regulators prefer the "judicial" mindset, for at least four reasons. First, it's familiar. In regulatory procedure, adjudication holds center stage. We use it in the "big cases." Its formality commands respect. Its familiarity defines the forum: because it uses judicial techniques, it is "*quasi*-judicial." The prefix *quasi* is the tipoff. There is nothing "quasi" about making policy for the public. Adjudication is only a procedural device, used to discern and declare the public interest. Second, many regulatory appointees are generalists. Faced with regulation's complexity, the generalist prefers to examine the arguments of the more experienced, rather than frame the arguments her own way. The third reason is overwork. If one is overrun by paper, it is easier to preside than to lead. Fourth, acting like a judge carries less risk; politics punishes errors of omission less than errors of commission.

#### *D. Resistance and Escape*

Attempts at regulatory capture are unavoidable; everyone does it.<sup>4</sup> Attempts are not avoidable, but capture is not inevitable. If regulatory capture is a state

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<sup>4</sup> See Cole Porter, *Let's Do It, Let's Fall in Love*, on The Very Best of Cole Porter ("Birds do it, bees do it, even educated fleas do it . . . . Some Argentines without means do it; I hear even Boston beans do it.").

of being persuaded, based on the persuader's identity rather than a policy's merits, how does an agency resist; or if already captured, escape?<sup>5</sup>

As explained, an agency is susceptible to capture when there are (a) policy voids instead of vision, (b) priorities and procedures that reflect parties' requests rather than public interest needs, (c) chronic resource differentials between the regulator and regulated, and (d) fair-weather politicians whose support for regulation sags when pressured by those who would weaken it. Successful agencies shrink their susceptibility to capture, using several strategies.

***Agency as framer:*** An applicant may have a legal right to seek a benefit, but not a right to frame the case. An alert agency reframes an applicant's private interest request as a public interest question. Looking at products, prices, performance, the agency asks: what do customers deserve? Looking at market structures and corporate structures, the agency asks: which ones produce the best performance? Reframing means the public interest dog wags the applicant's tail, not the other way around. It means organizing each proceeding by asking "How do we advance the public interest?" not "What do the parties want us to decide?" In major policy areas like performance standards, mergers, and rates, agencies focused on framing will create substantive policies before adjudicatory proceedings occur. Then the parties' proposals will track commission priorities, not the other way around. Or if the relevant policy has not been established, the alert commission will open the proceeding with staff papers that frame the issues in objective terms, specifying public interest questions that all parties are obligated to address.

***Agency as evaluator of industry performance:*** Regulation works when it links inputs to outputs. The agency must (a) describe a public interest vision, measured in results (investment, innovation, prices, quality of service, safety); (b) shape internal agency actions (budgeting, staffing, education) to prepare for external actions (agency orders aimed at industry performance); (c) take external actions (promulgating rules, issuing orders, recommending new

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<sup>5</sup> "Captured" can describe both a person and an institution, so the solutions are both personal and institutional. This Essay focuses on the institutional solutions. Personal protection requires an armor of personal attributes, including purposefulness, education, decisiveness, and independence. *See generally* SCOTT HEMPLING, *PRESIDE OR LEAD? THE ATTRIBUTES AND ACTIONS OF EFFECTIVE REGULATORS* (2nd ed. 2013) (these attributes and others are discussed more fully in chapters one to ten).

legislation) to induce utilities and consumers to produce that performance; and (d) evaluate and revise.<sup>6</sup>

***Agency as committed employer:*** Successful agencies offer their employees indispensable roles and opportunities for advancement. They connect professional expectations to industry performance, creating a commission culture that supports the statutory mission. They insist that each department have for each department head and each employee, a work plan that emphasizes indispensability, propels workers to achieve, and expects them to advance. That work plan must be backed by an education plan that grows juniors into seniors. Achievement is reflected in salaries similar to those paid by the regulated entities, salaries uncompromised by arbitrary budget caps. Developing a corps of professionals, and paying them their worth, is more cost-effective than wishing and watching: wishing regulated entities would perform better, and watching the best agency employees migrate to private-sector jobs.

***Resources based on demands rather than politics:*** When agency resources depend on legislative decisions, there is risk of rollbacks based on stakeholder dissatisfaction, or arbitrary caps that base budgets on last year's totals rather than next year's demands. A better combination of budgetary independence and fiscal accountability is to allow the agency to fund its own budget, through fees on regulated entities. With this authority, the agency can vary the funding source with the regulated activity. The fees can reflect case complexity, ensuring sufficient resources while assigning costs to the cost-causer. When a utility proposes a conglomerate merger lacking any public interest purpose, with the agency statutorily obligated to prevent harm, the cost of regulatory review belongs with the merging parties, not the taxpayers. For commission-initiated work, such as industry-wide rulemakings, the revenue source can be general fees charged to the regulated based on some combination of revenues, profits, and assets, with these fees recoverable through prices, since customers are the beneficiaries.

Caution: Objectors to fee-based agencies worry that the agencies will over-fund or under-deliver. But until such evidence emerges, the realistic assumption is that the risk of over-funding is lower than the risk of under-regulating. For commissions that spend inefficiently (which is different from over-regulating), the solution is not to cut their staff but to help them spend

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<sup>6</sup> See PETER DRUCKER, *THE EFFECTIVE EXECUTIVE: THE DEFINITIVE GUIDE TO GETTING THE RIGHT THINGS DONE* (2006).

wisely. A regular assist from independent experts in commission management, coupled with supportive legislative and executive oversight, should be par for all regulatory agencies inside and outside regulation.

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My most inspiring encounters have been with regulatory agencies that combat capture with quality. To their entire professional staffs, from the thirty-year veterans to the six-month novices, their leaders deliver this message: “We will leverage our statutory authority and our professional ability to bring excellence to the industries we regulate, starting with excellence within our own organization. We will do this by putting ourselves on a path to self-improvement so rigorous, so disciplined, so transparent, so determined, and so optimistic that we will persuade the utilities, the legislators, and the courts that we deserve not only their respect but their deference.” These agencies remain works in progress, but their progress is undisputed.

**Draft Scoping Decision Document  
for  
Sandpiper Pipeline Project  
PUC Docket NO. PL-6668/CN-13-473  
PUC Docket NO. PL-6668/PPL-13-474**

**Minnesota Department of Commerce  
Energy Environmental Review and Analysis  
Draft April 8, 2016**

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## 1.0 Introduction

The purpose of an Environmental Impact Statement (EIS) is “to provide information for governmental units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.”<sup>1</sup>

The purpose of the scoping process, in turn, is “to reduce the scope and bulk of an EIS before the preparation of the EIS, identifying only those potentially significant issues relevant to the proposed project, define the form, level of detail, content, alternatives, timetable for preparation and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.”<sup>2</sup> “All projects requiring an EIS must have an EAW [Environmental Assessment Worksheet] filed with the RGU [responsible governmental unit]. The EAW shall be the basis for the scoping process.”<sup>3</sup>

The Minnesota Environmental Policy Act (MEPA) states that: “[w]here there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit.”<sup>4</sup>

For this project, the “major governmental action” is a decision by the Minnesota Public Utilities Commission (PUC) to grant a Certificate of Need (CN)<sup>5</sup> and a Route Permit<sup>6</sup> for the North Dakota Pipeline Company LLC’s (NDPC’s or Applicant’s) proposed Sandpiper Pipeline Project (referred to as “Sandpiper” or “project”). This EIS will inform both PUC decisions on whether to issue a CN, and if need is found, whether to issue a Route Permit. Before issuing a Route Permit, the PUC must decide whether to issue a CN. The EIS will also inform other governmental agencies on a host of environmental and regulatory permits required for the project.

On January 11, 2016, the PUC — the RGU for this EIS<sup>7</sup> — issued an order authorizing DOC-EERA staff to prepare a combined EIS for the CN and the Route Permit. The order also requested DOC-EERA to administer the EIS process in consultation with the PUC’s Executive Secretary, the MDNR, and the MPCA to meet the requirements of the MEPA and Chapter 4410 of the Minnesota Rules.

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<sup>1</sup> Minn R. 4410.2000, subp. 1.

<sup>2</sup> Minn. R. 4410.2100, subp. 1.

<sup>3</sup> Minn. R. 4410.2100, subp. 2.

<sup>4</sup> Minn. Stat. § 116D.04, subd. 2a.

<sup>5</sup> See Minn. Stat. § 216B.243, subp. 2; Minn. R. Ch. 7853  
[\[https://www.revisor.mn.gov/statutes/?id=216b.243\]](https://www.revisor.mn.gov/statutes/?id=216b.243).

<sup>6</sup> See Minn. Stat. § 216G.02, subd. 2; Minn. R. Ch. 7852  
[\[https://www.revisor.mn.gov/statutes/?id=216G.02\]](https://www.revisor.mn.gov/statutes/?id=216G.02).

<sup>7</sup> See Minn. R. 4410.4400, subp. 24.

## 1.1 Purpose of the Draft Scoping Decision Document

The Department of Commerce-Energy Environmental Analysis and Review (DOC-EERA) staff, with the assistance of the Minnesota Department of Natural Resources (MDNR) and the Minnesota Pollution Control Agency (MPCA) have prepared this Draft Scoping Decision Document (DSDD) for the proposed project. The purpose of this document is to identify impacts of the proposed project, alternatives to the proposed project, and impacts of any alternatives to be addressed in the EIS. In addition to identifying impacts and alternatives, this document also provides a proposed outline for the EIS and a tentative schedule for the environmental review process. This DSDD is a companion document to the Scoping EAW, which describes the proposed project in more detail and summarizes significant environmental impacts of the proposed project.<sup>8</sup>

## 1.2 Description of the Proposed Project

NDPC proposes to construct and operate the Sandpiper project, a new 612-mile oil pipeline extending from Beaver Lodge Station, south of Tioga, North Dakota, to a new terminal facility at Clearbrook, Minnesota, and then on to an Enbridge Energy, LLC affiliate's terminal and tank farm in Superior, Wisconsin. The proposed project includes approximately 303 miles of new pipeline in Minnesota. As proposed, the project will use a 24-inch-diameter pipeline from North Dakota to Clearbrook and a 30-inch-diameter pipeline from Clearbrook to the Wisconsin terminal. The project will also include construction of a new oil terminal with two 150,000 barrel tanks and pump station (Clearbrook West), just west of the existing terminal and storage tanks in Clearbrook and a pipeline inspection gauge (PIG) launcher and receiver types and mainline valve facilities at Pine River, Minnesota.

## 1.3 Regulatory Process

To construct and operate a crude oil pipeline greater than 6 inches in diameter in Minnesota, NDPC must apply for, and receive, a CN approval and a Route Permit from the PUC. Other permits required from state and federal agencies are listed in Section 7 of this document.

The proposed project has gone through a lengthy and complex regulatory process to date as summarized in Section 1.4.<sup>9</sup> Some of the "System Alternatives" and alternative routes proposed during this previous regulatory process are included in the draft scope of this EIS; however, new alternatives can be added and previous alternatives could be removed as a result of this scoping process.

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<sup>8</sup> The Scoping EAW is available here: <http://mn.gov/commerce>.

<sup>9</sup> For the complete record, see e-dockets (<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&searchType=new>) using docket number PPL-13-474 (route) and CN-13-473.

## 1.4 Procedural History

The Applicant filed CN and Route Permit applications on November 8, 2013. The Applicant filed revised applications on January 31, 2014, reflecting changes in NDPC's ownership and modifications to the proposed route to address concerns raised in Carlton County. Both the November 2013 and January 2014 applications contained an Environmental Information Report (EIR) identifying impacts of the Applicant's preferred route. The PUC accepted the Sandpiper Route Permit Application as complete on February 11, 2014, and the CN Application as complete on March 19, 2014.

Between March and August 2014, DOC-EERA and PUC staff held public information and scoping meetings and numerous agency meetings. Following these meetings, the Applicant further modified the route to address landowner, environmental, engineering, design, or constructability concerns with the original proposal. On August 25, 2014, the PUC accepted 53 route alternatives, including all the alternatives proposed by the Applicant, SA-03 as modified, and seven expanded route widths for referral in the Route Permit proceedings.<sup>10</sup>

On April 23, 2015, Enbridge submitted CN and Route Permit Applications for the Line 3 Replacement (L3R) Project. Consistent with the Applicant's notification to the PUC on May 30, 2014, in the Sandpiper route proceeding, the L3R route parallels the Sandpiper route between Clearbrook, Minnesota, and Superior, Wisconsin. The PUC accepted the L3R Applications as complete on July 1, 2015.

The PUC stayed the CN and route proceedings while the Court of Appeals considered the implications of the earlier PUC decision to bifurcate the proceedings. When the Court of Appeals issued its decision on September 14, 2014, the PUC lifted the stay.

On January 11, 2016, the PUC issued its written order establishing a process for conducting the Sandpiper EIS and the joint CN/Route Permit hearings.<sup>11</sup> In relevant part, the order (1) lifted the stay of the CN docket, (2) rejoined the CN and Route Permit dockets, (3) ordered preparation of an EIS covering need and routing issues pursuant to Minnesota Statutes Chapter 116D and Minnesota Rules Chapter 4410, and (4) authorized DOC-EERA to administer the EIS process in consultation with PUC's Executive Secretary, and enter into an interagency agreement with MPCA and MDNR.

## 2.0 Environmental Review Process

Environmental review in Minnesota is administered through Minnesota Rules Chapter 4410. The process broadly encompasses scoping for the EIS, and preparation of a Draft EIS (DEIS) and a Final EIS (FEIS), with opportunities for public review and comment. When the final

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<sup>10</sup> See PUC Order *Accepting Alternative Route and System Alternatives for Evidentiary Hearing Development, Requiring Notice, and Setting Procedures* PL-6668/PPL-13-474; PL-6668/CN-13-473 (Document ID: [20148-102500-02](#)).

<sup>11</sup> See PUC Order *Lifting Stay, Rejoining Need and Routing Dockets, and Referring for Contested Case Proceedings* PL-6668/PPL-13-474; PL-6668/CN-13-473 (Document ID: [20161-117136-01](#)).

scope for the EIS has been approved by the RGU and the EIS Preparation Notice has been issued, the RGU has 280 days to complete the environmental review process.

## 2.1 Environmental Impact Statement Scoping

Scoping is the first step in development of an EIS. According to Minnesota Rule 4410.2100, subpart 1, the purpose of scoping is “...to reduce the scope and bulk of an EIS, identify only those potentially significant issues relevant to the proposed project, define the form, level of detail, content alternatives, time table for preparation of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.”<sup>12</sup>

In addition to information in the EAW, the draft scope includes information from past orders issued by the PUC and public input received through numerous filings, public meetings and comment periods as well as informal discussions with tribes, the public and various state and federal agencies. Relevant information from the L3R record is also included due to the co-location of L3R and Sandpiper east of Clearbrook. Additional information or alternatives resulting from the scoping process will be addressed in the final scoping decision.

Public review and comment on the DSDD will be conducted in accordance with Minnesota Rule 4410.2100. A 45-day scoping comment period<sup>13</sup> will begin when the Notice of Availability for the DSDD is published in the *Minnesota Environmental Quality Board (EQB) Monitor*. Scoping meetings will be held during the 45-day comment period, providing an opportunity for the public and federal, state, tribal and local government agencies to comment on the DSDD.

DOC-EERA staff will prepare a Comment Summary Report and propose a Final Scope based on comments received during the process. The Final Scoping Decision Document (FSDD) will identify all alternatives to be considered in the EIS and will be approved by the PUC. A notice of availability of the FSDD will be published in the *EQB Monitor*.

The Scoping EAW for this project is available and has been circulated with this DSDD. The purpose of the Scoping EAW is to help inform the scoping process by describing the proposed project and providing initial information on potential impacts along the Applicant’s preferred route. Accordingly, the Scoping EAW reflects the updated route for which the Applicant is seeking a Route Permit.

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<sup>12</sup> See Minn. R. 4410.2100, subp. 1.

<sup>13</sup> Minn. R. 4410.2100, subp. 3, requires a 30-day minimum scoping period, extended in this case to 45 days to accommodate scoping meetings in multiple counties crossed by the proposed and alternative routes.

## 3.0 Alternatives

### 3.1 Evaluation Criteria for Analysis of Alternatives

#### 3.1.1 *Minnesota Rules for Alternatives Analysis in an EIS*

Pursuant to Minnesota Rule 4410.2300(G), an EIS must compare the potentially significant impacts of the proposal with those of other reasonable alternatives to the proposed project. The EIS must address one or more of each of the following types of alternatives or provide a concise explanation of why no alternative of a particular type is included in the EIS:

- Alternative sites,
- Alternative technologies,
- Modified designs or layouts,
- Modified scale or magnitude,
- Alternatives incorporating reasonable mitigation measures identified through comment periods for EIS scoping or the DEIS, and
- No Action Alternative.

The alternatives that will be considered during the DEIS process are identified in Section 3 of this document. The public may comment on these alternatives and propose additional alternatives during the 45-day comment period on the DSDD. DOC-EERA will apply the criteria in Minnesota Rule 4410.2300(G) in determining whether additional alternatives not already identified in Section 3 will be included for analysis in the DEIS.

Minnesota Rule 4410.2300(G) states that an alternative may be excluded from analysis in the EIS if:

- it would not meet the underlying purpose of the project,
- it would likely not have any significant environmental benefit compared to the project as proposed, or
- another alternative, of any type, that will be analyzed in the EIS would likely have similar environmental benefits but substantially less adverse economic, employment or sociological impacts.

#### 3.1.2 *Criteria for Evaluating Alternatives included in an EIS*

All alternatives that will be carried forward for consideration in the EIS will be identified in the FSDD. Not all alternatives included in the final scope, however, must be evaluated in detail in the EIS. Alternatives included in the scope of the EIS that were considered but eliminated based on information developed through the EIS analysis must be discussed briefly and the reasons for their elimination must be stated.

DOC-EERA will use the following criteria in determining whether (under Minnesota Rule 4410.2300(G)) an alternative included in the scope of the EIS could be eliminated based on information developed through the EIS analysis.

1. The alternative must meet the underlying purpose of the project.

The purpose of the project is to transport growing crude oil production from the Bakken Formation in North Dakota to the Superior, Wisconsin, terminal and then connect to various other pipelines expanding access to refinery markets in the US Midwest and beyond.<sup>14</sup>

2. The alternative must be reasonable.

DOC-EERA will assess reasonableness of the alternatives based on the technical feasibility, costs, reliability, energy demand, overall state energy needs and the appropriateness of the size, type and timing of the alternative compared to the Applicant's proposed project.

3. The alternative would have significant environmental benefits compared to the applicant's proposed route.

Examples of environmental criteria that may be used during alternatives evaluation in the DEIS include but are not limited to:

- A. Wells and aquifers: number of wells and aquifers within alternative corridor
- B. Waterbodies: quality, context, number of rivers, lakes, creeks, and drainages, crossed by each alternative
- C. Wetlands: acres, types, number of crossings
- D. Rare Resources: Natural Heritage Information System (NHIS) data impacted by each alternative (by number or acreage)
- E. Land Management/Ownership: number of acres of tribal lands, or federal or state parks/recreation impacted by each alternative
- F. Land Use Cover Type: acreage of agriculture, forestry, urban, etc.
- G. Cultural Resources: number of sites, National Register of Historic Places (NRHP) eligibility, impacts within the project corridor, Traditional Cultural Properties, and subsistence areas
- H. Co-location: number of miles co-located with other utility or roadway infrastructure by each alternative

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<sup>14</sup> Certificate of Need Notice Plan, Enbridge, June 7, 2013; p.ii.

- I. High Consequence Areas (HCAs): Number of HCAs crossed by each alternative as defined by Pipeline and Hazardous Materials Safety Administration (PHMSA) criteria for hazardous liquid pipelines. Focus on unusually sensitive ecological resources.<sup>15</sup>
4. The alternative would have similar environmental benefits but substantially less adverse economic, employment or sociological impacts compared to the applicant's proposed route.

Examples of economic, employment or sociological criteria that may be used to analyze the alternatives during evaluation in the DEIS include but are not limited to:

- A. Project cost
- B. Number of jobs due to construction
- C. Full-time jobs as a result of construction
- D. Induced impacts
- E. Displacement
- F. HCAs: Number of HCAs crossed by each alternative as defined by PHMSA criteria for hazardous liquid pipelines. Focus on populated areas and drinking water sources.<sup>16</sup> Populated areas include both high population areas (called "urbanized areas" by the US Census Bureau) and other populated areas (areas referred to by the US Census Bureau as a "designated place").

### 3.2 Alternative Sites

Other oil pipelines (existing or newly constructed) may be used to meet the demand for oil delivery. Three potential alternative pipelines are noted by NDPC in its CN Application: the Plains Bakken North Pipeline Project, High Prairie Pipeline Project, and Koch Pipeline Company Dakota Express Pipeline. In January 2014, Koch Pipeline Company announced that their project will not move forward<sup>17</sup> and therefore it is not considered a viable alternative pipeline system.

These pipelines, and others that may have been approved since the CN Application was filed will be evaluated as alternatives in the EIS.

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<sup>15</sup> *Unusually sensitive ecological areas* include locations where critically imperiled species can be found, areas where multiple examples of federally listed threatened and endangered species are found, and areas where migratory water birds concentrate.

<sup>16</sup> *Drinking water sources* include those supplied by surface water or wells and where a secondary source of water supply is not available. The land area in which spilled hazardous liquid could affect the water supply is also treated as an HCA.

<sup>17</sup> See <http://www.bloomberg.com/news/articles/2014-01-22/koch-ends-plans-for-pipeline-to-illinois-from-bakken>.

### 3.3 Alternative Technologies

#### 3.3.1 Rail

The transport of oil by rail involves moving oil from where it is produced to an oil-train terminal for temporary storage and subsequent transport by rail to an interconnection point or refinery where it may be processed into petroleum products. Oil transport begins at each production well. At these wells, oil is loaded onto trucks or transported by gathering pipelines to oil terminals for temporary storage and transfer to other modes of transportation (railroads, trucks and pipelines) for delivery to destination points, typically refineries that process the raw material into various finished products. Oil terminal facilities may be designed specifically for pipelines, unit trains, manifest trains, truck terminals or a combination thereof.

As proposed, the project would transport 25,000 barrels per day (bpd) from Beaver Lodge to Berthold, 225,000 bpd from Beaver Lodge to Superior, and up to 150,000 bpd from Clearbrook to Superior. To carry an equivalent amount of oil on unit trains would require several additional unit trains per day. NDPC estimates that more than 2,000 rail tank cars would be required to transport an equivalent amount of oil on a daily basis, given the number of cars loading, unloading and making return empty trips per day.<sup>18</sup>

#### 3.3.2 Truck

Transporting crude oil by tanker truck is another potential alternative to constructing the proposed project. Tanker trucks are commonly used to move crude oil from wellhead locations not served by pipeline gathering systems to aggregation points and storage facilities. Typically oil tanker trucks are used where the travel distances are not significant.

To transport an equivalent amount of oil by truck as the proposed project would require expansion of existing or construction of new truck loading terminal facilities in Beaver Lodge and Berthold, North Dakota, and construction of new unloading facilities in Clearbrook, Minnesota, and Superior, Wisconsin. Substantial upgrades and ongoing maintenance may also be required to the connecting roadways along the truck transportation routes.<sup>19</sup>

### 3.4 Modified Designs and Layouts: System Alternatives

Six System Alternatives were developed during the previous round of scoping meetings for the project and approved by the PUC. These System Alternatives are shown in Table 1: Description of System Alternatives and Appendix A, Figure 1, and also described in detail below. The EIS will further evaluate alternatives.

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<sup>18</sup> "Report on the Impact of Crude Oil-By-Rail and the 'No-Action' Scenario for the Sandpiper Pipeline Project in Minnesota." See eDockets, Document ID No. [20148-102135-05](#), p. 20.

<sup>19</sup> See Sandpiper CN Application, part 7854.0540, p. 6-9.



<b>TABLE 1 Description of System Alternatives</b>				
<b>System Alternative (SA)</b>	<b>Description</b>	<b>Length (approximate miles)</b>	<b>States Crossed (number)</b>	<b>Counties Crossed (number)</b>
SA-03 Viking-North Branch-Superior	Begins in Tioga, ND, at the Beaver Creek Station and follows System Alternative-Applicant route east into MN. Just west of Crookston, MN, it turns south and follows the Viking Pipeline. In Clay County, MN, it continues southeast following the Viking Pipeline toward North Branch, MN. It then turns north to Superior, WI, following existing pipeline corridors.	700	3	25
SA-04 Alliance-Chicago	Begins in Tioga, ND, at the Beaver Creek Station and follows SA-Applicant route east to McHenry County, ND. SA-04 turns southeast and follows the Alliance Pipeline and proceeds generally southeast through MN, IA, and IL to its termination point in Joliet, IL.	940	4	48
SA-05 Alliance-Enbridge-Chicago	Begins in Tioga, ND, at the Beaver Creek Station and follows Applicant's preferred route east to McHenry County, ND, where it intersects with the Alliance Pipeline and travels southeast to Richland County, ND, where it turns south and follows the I-29 corridor. In Deuel County, SD, SA-05 intersects with the Northern Border Pipeline and travels southeast across MN and IA to Poweshiek County, IA, where it intersects with an Enbridge pipeline and continues east through IL to its termination point in Joliet, IL.	1,000	5	50
SA-06 RR-Alliance-MinnCann-TC-Superior	Begins in Tioga, ND, at the Beaver Creek Station and follows SA-Applicant route east to Grand Forks County, ND, where it follows the railroad corridor southeast to Wahpeton, ND. It then travels southeast along MN Highway 9 until it intersects with the Alliance Pipeline and continues southeast to just southwest of Willmar, MN. It then turns east and continues southeast toward the Twin Cities Metropolitan area where it intersects with the MinnCan Pipeline and continues to the vicinity of the Flint Hills Refinery in Rosemount, MN. It then turns north and follows existing pipelines to North Branch where it continues north following Interstate 35 to Carlton County, MN, where it turns generally east and follows SA-Applicant to Superior, WI.	800	3	33
SA-07 I-29-Magellan-MinnCan-TC-Superior	Begins in Tioga, ND, at the Beaver Creek Station and follows SA-Applicant route east to Grand Forks, ND, where it intersects with I-29 corridor and travels south to Fargo, ND. It then continues traveling southeast along the Magellan Pipeline corridor toward Alexandria, MN. At Alexandria, it turns south toward Willmar, MN, and then turns southeast toward the Twin Cities Metropolitan area where it intersects with the MinnCan Pipeline and continues to the vicinity of the Flint Hills Refinery in Rosemount, MN. It then turns north and follows existing pipelines to North Branch where it continues north following Interstate 35. It then continues to Carlton County, MN where it turns generally east and follows SA-Applicant to Superior, WI.	810	3	34

<b>TABLE 1 Description of System Alternatives</b>				
<b>System Alternative (SA)</b>	<b>Description</b>	<b>Length (approximate miles)</b>	<b>States Crossed (number)</b>	<b>Counties Crossed (number)</b>
SA-08 I-29-I-94-TC	Begins in Tioga, ND, at the Beaver Creek Station and follows SA-Applicant route east to Grand Forks, ND, where it intersects with I-29 corridor and travels south to Fargo, ND. It continues traveling southeast along the I-94 corridor toward the Twin Cities Metropolitan area. Just northwest of Maple Grove, MN, it turns east and follows an existing pipeline generally east across the north suburbs before turning south and following another existing pipeline across the east suburbs before terminating in Rosemount, MN.	635	3	27
SA-03-as modified L3-RA-10	This alternative is a modification to the system alternative SA-03. Routing proceeds south along SA-03, then east along CSAH 40, then to Clay county T-367, south along the Minnkota Power Cooperative Transmission Line, and then south on CSAH 7 to meet up with the SA-03 route.	263	3	10
SA-03-as amended L3-RA-10	This alternative is a variation of the Sandpiper SA-03 Modified. The route would proceed from the west: southeast on SA-03 Modified, northeast on US-169 to avoid Milaca, east on MN-23 to the intersection with MN-65, then cross country to CSAH 11 to avoid Mora, north on CSAH 11 to reconnect with MN-23, and then east on MN-23 to connect with the SA-03 Modified route.	382	3	15
L3-RA-01	This alternative would modify the centerline and route of the Applicant's April 2015 preferred route where it crosses mostly agricultural land. This alternative deviates from the April 2015 Route at milepost (MP) 27.4-W in Kittson County, MN, and rejoins the route at MP 27.9-W, in Marshall County, MN.	0.55	1	1
L3-RA-02	This alternative would modify the centerline and route of the Applicant's April 2015 preferred route where it crosses mostly agricultural land.	2.04	1	1
L3-RA-03	This alternative would modify the centerline and route of the Applicant's April 2015 preferred route where it crosses mostly agricultural land.	7.31	1	1
L3-RA-04	This alternative exits the Clearbrook Terminal on the north side of the facility. From that point, it turns west and then turns and runs south to rejoin the Applicant's preferred route south of the Terminal and Deep Lake.	2.52	1	1
L3-RA-05	This alternative would modify the centerline of the Applicant's preferred route where it crosses mostly forested land with some agricultural land.	13.01	1	1
L3-RA-06	This alternative would modify the centerline of the Applicant's preferred route where it crosses mostly agricultural land.	0.39	1	1

<b>System Alternative (SA)</b>	<b>Description</b>	<b>Length (approximate miles)</b>	<b>States Crossed (number)</b>	<b>Counties Crossed (number)</b>
L3-RA-07	This alternative would modify the centerline of the April 2015 Route where it crosses a mix of forested, open, and agricultural land.	1.45	1	1
L3-RA-08	This alternative would modify the centerline of the April 2015 Route where it crosses a mix of forested, open, and agricultural land.	7.19	1	1
L3-RA-09	This alternative would modify the centerline of the April 2015 Route where it crosses mostly forested land.	0.60	1	1
L3-RA-10	This alternative is a variation of Sandpiper SA-03 Modified. The route would proceed from the west: southeast on SA-03 Modified, northeast on US-169 to avoid Milaca, east on MN-23 to the intersection with MN-65, then cross country to CSAH 11 to avoid Mora, north on CSAH 11 to reconnect with MN-23, and then east on MN-23 to connect with the SA-03 Modified route.	42	1	3
L3-RA-11	This alternative would replace Line 3 in its current location.	282	3	12

## 3.5 Modified Designs and Layouts: Route Alternatives

Route alternatives identified during the previous round of scoping meetings for the project will be included in the alternatives list in the initial screening as alternatives for consideration. These route alternatives can be found in detail in the Sandpiper Route Summary Report.<sup>20</sup>

### 3.5.1 *Description of Applicant's Preferred Route and Associated Facilities*

The Applicant has applied to the PUC for a CN and Route Permit to construct a new 616-mile pipeline to transport crude oil from its Beaver Lodge Station south of Tioga, North Dakota, to an Enbridge Energy, LLC affiliate terminal in Superior, Wisconsin. Approximately 303 miles of the new pipeline would be located in Minnesota. See Appendix A, Figure 2, of this document for a map of NDPC's preferred route.

The pipeline route proposed by NDPC begins at the Minnesota-North Dakota border approximately 2 miles south of Grand Forks, North Dakota, and follows Enbridge Energy Partners' existing pipeline right-of-way (ROW) to Clearbrook, Minnesota. From Clearbrook the pipeline generally follows the existing Minnesota Pipe Line Company ROW south to Hubbard, Minnesota. From Hubbard the route proceeds east traversing undeveloped areas and follows portions of existing ROWs for electric transmission lines and railroads. The pipeline crosses the Minnesota-Wisconsin border approximately 5 miles east-southeast of Wrenshall, Minnesota, and terminates in Superior, Wisconsin. NDPC's proposed pipeline route would cross portions of Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties.

The pipeline between North Dakota and Clearbrook would be composed of 73 miles of 24-inch-diameter pipeline with an annual average capacity of 225,000 bpd. The pipeline between Clearbrook and Superior would be composed of 230 miles of 30-inch-diameter pipeline with an annual average capacity of 375,000 bpd.

NDPC is requesting a route width of 750 feet (375 feet on each side of the pipeline centerline) except in the expanded route width areas already accepted by the PUC for further review for the project.<sup>21</sup> The same route width of 750 feet will be applied to other alternatives being evaluated as part of the Route Permit section of the EIS.

Sandpiper would also entail construction and operation of the following associated facilities and infrastructure in Minnesota:

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<sup>20</sup> See Sandpiper Alternative Routes Summary Report [<http://mn.gov/commerce/energyfacilities/documents/33599/Sandpiper%20Alternative%20Summary%20Report-JULY-16-2014.pdf>].

<sup>21</sup> See Sandpiper Alternative Routes Summary Report [<http://mn.gov/commerce/energyfacilities/documents/33599/Sandpiper%20Alternative%20Summary%20Report-JULY-16-2014.pdf>].

- Clearbrook West Terminal: A new terminal facility would be constructed near Clearbrook. A terminal facility is an aboveground facility with large tanks for the temporary containment of crude oil. A new Clearbrook Pump Station would be located within the footprint of the new Clearbrook West Terminal.
- Pine River Facility improvements: A PIG would be installed at the existing Pine River Facility, along with a mainline valve, metering equipment, and an electrical service building.
- Mainline valves: The project would include 21 mainline safety valves. These valves are located along the pipeline to monitor and manually control flow as a measure of safety and efficiency.
- Cathodic protection: Cathodic protection systems would be installed along buried pipelines to mitigate the threat of external corrosion for buried metallic structures and maintain safe operation and integrity of pipelines.
- Pipe/material storage yards: NDPC would temporarily use off-ROW areas (e.g., rail sidings) for pipe and material storage and to receive rail deliveries. In addition, construction contractors would require off-ROW contractor yards to park equipment and stage construction activities.
- Access roads: The project would require the use of a variety of public roads, existing privately owned roads, modifications to existing roads and construction of new access roads to provide access to the project site during construction. NDPC would obtain landowner permission, conduct environmental surveys and obtain applicable environmental permits and clearances prior to constructing roadway modifications or new access. Permanent access roads would be constructed to each mainline valve.

### 3.5.2 *Route Alternatives*

In its August 25, 2014, order, the PUC accepted 53 Sandpiper route alternatives recommended by DOC-EERA in its July 17, 2014, Sandpiper Alternative Routes Summary Report with comments and recommendations, and also accepted system alternative SA-03 as modified by DOC-EERA for evaluation in the environmental document. The PUC also accepted the seven expanded route width areas recommended by DOC-EERA and the expanded route width for Carlton County 2 requested by NDPC. See DOC-EERA's website for a description of the alternatives.<sup>22</sup> Route alternatives are shown in Appendix A, Figure 2.

The EIS will also consider any new route alternatives that are developed during the scoping process through public and agency involvement. Route alternatives to be carried forward for evaluation in the EIS must be approved by the PUC.

## 3.6 **Modified Scale or Magnitude**

The EIS will not be evaluating alternatives of different pipe dimensions or different pipe metal thickness. Due to engineering requirements and requirements under PHMSA, this EIS

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<sup>22</sup> See <http://mn.gov/commerce/energyfacilities//resource.html?id=33938>.

will not address variations in different pipe dimensions or different pipe metal thickness as an alternative; pipe thickness will be discussed as a mitigation option.

### **3.7 Alternatives Incorporating Reasonable Mitigation Measures**

This alternative type is not typically applied to large linear projects. Some element of reasonable mitigation measures will be evaluated with the alternatives identified in Section 3.

### **3.8 No Action Alternative**

The EIS will describe the expected condition if the project is not developed with respect to the potential environmental and socioeconomic effects outlined in Section 4 of this document. The No Action Alternative assumes transport of Bakken oil will continue by other means, including, rail, interstate highways and other pipeline systems.

## **4.0 Environmental Impact Statement Content**

### **4.1 General EIS Format and Approach**

According to Minnesota Rule 4410.2000, subp. 1, “The purpose of an EIS is to provide information for government units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.”

A preliminary table of contents for the Draft EIS is provided in Appendix B.

### **4.2 Sandpiper Pipeline Project’s Relationship to Line 3 Replacement Project**

On April 23, 2015, Enbridge submitted CN<sup>23</sup> and Route Permit Applications<sup>24</sup> for the L3R Project (Docket No. PPL-15-137). Consistent with NDPC’s notification to the PUC on May 30, 2014, in the Sandpiper route proceeding, the L3R route parallels the Sandpiper route

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<sup>23</sup> See Initial Filing Certificate of Need Application for the Minnesota Public Utilities Commission Enbridge Energy, Limited Partnership Line 3 Pipeline Replacement PL-9/CN-14-916 (Document ID: [20154-109653-03](#)).

<sup>24</sup> See Initial Filing Route Permit Application for the Minnesota Public Utilities Commission Enbridge Energy, Limited Partnership Line 3 Pipeline Replacement PL-9/PPL-15-37 (Document IDs: [20154-109661-07](#), [20154-109661-08](#), [20154-109661-09](#)).

between Clearbrook, Minnesota, and Superior, Wisconsin. The PUC accepted the L3R applications as complete on July 1, 2015.<sup>25</sup>

The L3R Project will have its own separate CN and Route Permit. A separate environmental document will be completed for the L3R Project. If a Route Permit is issued for the Applicant's preferred route for Sandpiper, the Applicant plans to co-locate the proposed L3R pipeline adjacent to the Sandpiper pipeline from east of Clearbrook to the Minnesota-Wisconsin border.

The Sandpiper EIS will analyze the potential impacts of the L3R Project as part of the EIS's cumulative impacts discussion. In addition, other projects throughout the Sandpiper corridor that may cause cumulative impacts will also be discussed at a local, county and larger regional levels.

### 4.3 Data and Analysis

"Data and analyses in the EIS shall be commensurate with the importance of the impact and the relevance of the information to making a reasoned choice among alternatives and to the consideration of the need for mitigation measures .... Less important material may be summarized, consolidated or simply referenced."<sup>26</sup>

If information about potentially significant environmental effects is essential to a reasoned choice among alternatives and is not known, cannot be obtained, or the means to obtain it is not known, the EIS will include a statement that such information is incomplete or unavailable and will explain the relevance of the information in evaluating potential impacts or alternatives; summarize existing credible scientific evidence that is relevant to evaluating the potential significant environmental impacts; and evaluate such impacts from the preferred route and route alternatives based upon theoretical approaches or research methods generally accepted in the scientific community.<sup>27</sup>

No field-level data collection will be performed for any of the route alternatives. Field data for the Applicant's preferred route has been completed by the Applicant. Publicly available data will be used to compare routes and will include existing federal, state and local government sources.

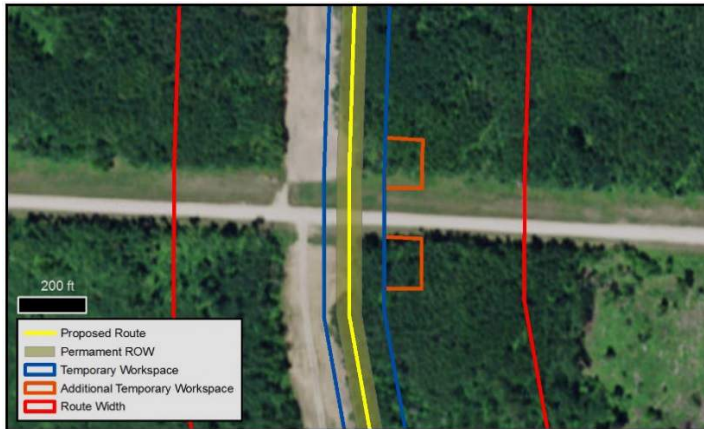
The scale of analysis will include a regional analysis area (RAA) to describe resources and potential impacts that may occur beyond the area of disturbance for construction and the permanent ROW, and an alignment analysis area (AAA). The AAA is focused on the land and alignment of various facilities within the proposed route width, as illustrated in Figure 1. The route width is the broadest area of land at 750 feet across and spans possible locations of pipelines, temporary construction, and the permanent ROW.

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<sup>25</sup> See Notice of Application Acceptance and Public Information and Environmental Analysis Scoping Meetings PL-9/CN-14-916; PL-9/PPL-15-137 (Document ID: [20157-112551-02](#)).

<sup>26</sup> Minn. R. 4410.2300(H)

<sup>27</sup> See Minn. R. 4410.2500.



**FIGURE 1 Illustration of Alignment Analysis Area**

The RAA is generally measured from the proposed route centerline of the AAA; analysis at this regional scale is intended to put the resources in perspective, such as noting that a particular wetland in the AAA is part of a larger complex or that prime farmland extends throughout the area. Quantitative analysis at this regional scale will count, measure, or otherwise present features a certain distance beyond the alignment centerline. The RAA will vary depending on the resource, but will be applied equally across all alternatives for a particular resource. For example, the RAA for some resources may be the entire county and for others may be a specified distance from the centerline. Resources within the AAA and RAA will be presented, along with information on quality and function of those resources, and potential impacts of the preferred and alternative routes analyzed.

The Sandpiper Route Permit Application includes the location of:

- Pipeline construction and permanent ROW,
- Extra work/staging areas,
- Access roads,
- Pipe and contractor yards, and
- Aboveground facilities (pump stations).

Detailed pipeline construction and operation features are not available for the major route alternatives accepted for analysis. General pipeline construction and pump station spacing will be analyzed using the same spatial footprint as the Applicant's preferred route.

## 4.4 Detailed Environmental, Social and Economic Analysis

Potential social, environmental and economic effects of the proposed project have been identified and described in the Scoping EAW. These are broad categories that will be further developed throughout the scoping of the EIS. Mitigation measures that could reasonably be applied to eliminate or minimize adverse environmental effects will be identified in the EIS.

A draft outline of the EIS is provided in Appendix B.



#### 4.4.1 *Human Settlement*

Qualitative comparison of route alternatives will be conducted for property values, human populations and income comparisons. Local land use plans will be identified. Potential aesthetic impacts will be addressed using federal guidelines applicable to federal forest areas and other unique aesthetic viewsheds that could be altered. Sensitive human settlement noise receptors will be assessed using state standard methods. Land type conversion as a result of project construction will be analyzed across all routes and route alternatives.

##### 4.4.1.1 *Data Sources Identified*

The 2010 United States census data will be the primary source data for demographic, housing and property value analysis. Supplemental data will be obtained from local and regional land use plans, development plans and discussions with local officials for zoning and land use analysis. Visual resource analysis will use USFS guidelines. Noise impacts will be assessed according to state standards on identified receptors. Environmental justice analysis will use Minnesota Department of Employment and Economic Development 2010, United States census datasets and the most recent American Community Survey of the US Census Bureau. Zoning and land use will be assessed qualitatively to identify possible current and future conflicts.

##### 4.4.1.2 *Housing*

Evaluation of residential housing impacts includes an estimate of the number of homes within a certain distance of the pipeline and any displaced homes. Impacts to homes as a result of changes in access resulting from construction will also be evaluated. Any residences or other buildings located within the Applicant's preferred route and other route alternatives will be identified. The potential for a resulting displacement of residences or other human activities will be assessed. The location and proximity of residences or other structures will be reviewed using aerial photography and analysis and proximity tools in ArcGIS.

##### 4.4.1.3 *Property Values*

Relative differences in property values among major route alternatives will be assessed. The construction and operation of a pipeline system can have effects on existing property values. Property values are influenced by site-specific factors and local and national market conditions. Existing literature and datasets will be used to assess effects.

##### 4.4.1.4 *Population*

Current and projected future distribution of human populations will be characterized. The sizes and distribution of incorporated areas will be summarized.

#### 4.4.1.5 *Environmental Justice*

Disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment will be assessed.

#### 4.4.1.6 *Income*

Income levels in the counties of the project region, including all major route alternatives, will be described. Median income levels among the major population groups will be compared.

#### 4.4.1.7 *Planning and Zoning*

Minnesota statutes provide local governments with zoning authority to promote public health and general welfare and Minnesota Statute Section 299J.05 provides for pipeline setback ordinances. County records will be reviewed to determine existing land use plans and zoning ordinances or development codes along the Applicant's preferred route and other route alternatives to determine whether location of the proposed facilities is consistent with current zoning and ongoing land uses.

#### 4.4.1.8 *Aesthetics*

Aesthetic and visual resources include the physical features of a landscape such as land, water, vegetation, animals, and structures. Resources will be identified within an RAA consistent with USFS guidelines for visual resource analysis. The impact assessment will also describe visual changes that will occur if the pipeline and associated facilities are built. Where adverse visual effects are identified, mitigation measures will be addressed. The relative scenic value or visual importance of these features will be assessed and impacts assessed based on distance to project structures, viewshed perspective, and duration of view impairment. The location and proximity of these resources to the project will be reviewed using spatial analysis tools in ArcGIS.

#### 4.4.1.9 *Noise*

The potential for long-term noise impacts from operation of pump stations and associated substations will be assessed by considering the sound level increase over existing levels. Receptors, such as homes, that may be impacted by changes in noise levels as a result of pump stations will be evaluated for compliance with the state noise standard.

#### 4.4.1.10 *Existing Contaminated Sites*

Documented sites of environmental contamination will be assessed. The greatest potential for impact would be the inadvertent excavation of preexisting environmental contaminants. To determine the potential presence of preexisting contamination, data will be collected from the US Environmental Protection Agency (EPA) Facility Registration Service (FRS). This exchange network is a partnership among states, tribes, territories and the EPA to facilitate the exchange of environmental information throughout the country. Readily available Minnesota databases residing with Minnesota Department of Transportation (MnDOT), MPCA, and other state agencies will also be obtained. For route comparison purposes,

counts of sites with preexisting contamination (if any) will be developed using spatial analysis tools within ArcGIS.

#### 4.4.2 *Transportation and Public Services*

Public service features include schools, medical facilities, religious facilities, fire and police stations and transportation networks (such as roads, airports and railroads), which serve the daily needs of residents in the community. These important features are located throughout all of the route alternatives the EIS will consider.

##### 4.4.2.1 *Data Sources Identified*

The data used to establish baseline community features will be derived from a variety of federal, state and local sources. Data for emergency services will be collected from the US Geological Survey (USGS) National Structures Datasets (NSD); cemeteries and church data will be derived from ESRI and other sources; highway data will be collected from USGS Topologically Integrated Geographic Encoding and Referencing (TIGER) data (and other sources); airport data will be collected from the Federal Aviation Administration's (FAA's) National Flight Data Center (and other sources); and schools data will be acquired from Minnesota databases.

Counts of features will be developed using spatial analysis tools within ArcGIS. Roadway crossings will be quantified and classified as state, federal, county and local. Roads intersecting route alternatives will be quantified by road class designation. Utility crossings of route alternatives pursuant to state regulations for a Utility Permit will be quantified. Emergency service plans will be identified and qualitatively discussed for each major route alternative area, and a tabulation of plans and characteristics will be compared to emergency response plans from the Applicant for identifying gaps and inconsistencies per state and federal rules. Airport types and locations will be quantitatively compared, as will schools and churches.

##### 4.4.2.2 *Roadways*

Comparison of route alternatives with various road classes will be performed. Compatibility of the proposed pipeline crossings of roads with MnDOT's utility accommodation policy will be performed to ensure that the proposed project, if constructed and operated, would not interfere with the flow of traffic or the safe operation of vehicles.

##### 4.4.2.3 *Public Utilities*

To assess the potential impact of the Applicant's preferred route and other route alternatives on public utilities that serve residents and businesses in the project area, existing electric and natural gas utilities that could be crossed or affected by the proposed project will be identified. Presence of power-generating facilities located in the vicinity of route alternatives will also be reviewed.

#### 4.4.2.4 *Emergency Services*

Law enforcement agencies, city and community fire departments, volunteer fire departments, rural fire departments, and fire protection districts along the Applicant's preferred route and other route alternatives will be identified. Hospitals, emergency response centers, emergency medical services and ambulance districts will also be identified. Potential impacts will be evaluated particularly as they relate to accidental spill releases.

#### 4.4.2.5 *Airports*

The locations of airports and private landing strips in the vicinity of all of the route alternatives will be identified. Setbacks and other requirements of these facilities will be evaluated.

### 4.4.3 *Economics*

Regional economies for the preferred and alternative routes in Minnesota will be evaluated for their regional and project-specific importance. An overview of the region-wide financial contribution of these economies will be provided. Mapping will be used to show the regional locations of land areas contributing to these economies. Evaluation of economic impacts will include cost estimates of the preferred route and alternatives and impacts to local and regional economies.

#### 4.4.3.1 *Data Sources Identified*

The 2011 USGS National Land Cover Database and additional detailed information on existing land use and zoning will be obtained from counties and municipalities crossed by the route alternatives. Information on prime and unique farmland will be obtained from Natural Resources Conservation Service (NRCS), and information on parcels participating in the Farm Service Agency Conservation Reserve Program will be obtained from the US Department of Agriculture (USDA). Information on US Army Corps of Engineers (USACE), US Department of Interior, and other federal recreational and public use areas will be obtained. This will include landscape-scale conservation systems such as the tallgrass prairie conservation area. Readily available database information will also be obtained from the Minnesota Geospatial Information Office (MnGeo), Minnesota Department of Agriculture (agricultural resource types), MDNR (forest inventory data, forest stewardship sites, minerals, public use recreation designations, and tourism centers), University of Minnesota 2011 Forest Products Industry Report, and Minnesota Office of Tourism.

Land cover datasets will be used to divide areas into the four major economic land uses in the region. This will be presented at a regional scale. Qualitative comparison will be made for the predominant economies in the project region and the relative differences among major route alignments.

Recreation and tourism data will be obtained from sources such as MDNR, Minnesota Department of Employment and Economic Development, the University of Minnesota

Tourism Center, and Minnesota Department of Revenue Leisure and Hospitality Industry reports.

#### 4.4.3.2 *Agriculture*

Agricultural areas, including prime farmland and crops in the project region, will be described. Both short- and long-term impacts and mitigation of pipeline construction and operation will be analyzed, including potential impacts to potatoes, wild rice, specialty crops, and organic and transitional operations.

#### 4.4.3.3 *Forestry*

Timber resources and forest areas in the project region will be described and mapped, including ownership. Potential impacts to the forest products economy will be discussed, particularly regarding land permanently removed from forestry by the pipeline ROW as well as access concerns for ongoing forest management activities.

#### 4.4.3.4 *Mining*

Minnesota's mining resources include ferrous and nonferrous metals, high-quality granite, limestone, sand and gravel, and peat. Locations and types of mining resources, active mines, and readily available mineral lease data will be mapped and summarized for the project region, and potential impacts discussed.

#### 4.4.3.5 *Recreation and Tourism*

Regional tourism, including public recreation lands, percent of housing serving as vacation/second homes, and other special use areas will be identified. Centers of tourism economy will be identified, including destination locations, such as the Brainerd Lakes area. The economic impact of recreational tourism regionally and locally will be analyzed within the RAA.

### 4.4.4 *Cultural Resources*

Cultural resources include archaeological resources, historic resources, cultural values (including Traditional Cultural Properties [TCPs]), and treaty areas. Archaeological resources include historic and precontact artifacts, structural ruins, or earthworks and are often partially or completely below ground. Historic resources include extant structures, such as buildings and bridges, as well as districts and landscapes. Potential impacts to cultural resources will be evaluated across the preferred route and route alternatives.

#### 4.4.4.1 *Data Sources Identified*

Information concerning cultural resources will be obtained from the cultural resources survey that is being conducted for the Applicant's preferred route. It is anticipated that the survey report will include information regarding archaeological sites, historic resources, and properties of cultural value for the Applicant's preferred route. The Minnesota State Historic Preservation Office (SHPO) maintains records of known archaeological and historic

resources, which will be consulted for the route alternatives. The Minnesota SHPO inventory files to be reviewed include: History/Architecture Inventory, History/Architecture Reports, Archaeological Sites and Archaeological Reports. In addition, historical maps (General Land Office, USGS, etc.), aerial imagery and online libraries will be used for additional information.

#### 4.4.4.2 *Archaeological, Historical and Cultural Resources*

Counts and categories of the resources within the Applicant's preferred route and the route alternatives will be developed using spatial analysis tools within ArcGIS. Direct and indirect impacts to cultural resources will be evaluated for resources in the AAA. Appropriate mitigation measures to reduce impacts from pipeline construction and operation and accidental releases will be recommended as necessary.

Cultural resources that are eligible, listed or unevaluated for listing in the Minnesota State Historic Sites Network and the Minnesota State Register of Historic Places will be included in the impacts assessment. In addition, impacts to resources that are eligible, listed or unevaluated for listing in the NRHP will also be assessed. The National Historic Preservation Act (NHPA) defines the term "historic property" to include districts, sites, buildings, structures, landscapes, and objects included in or eligible for the NRHP (54 US Code 300308).

#### 4.4.5 *Natural Environment*

Natural environment broadly encompasses air, water, and biological resources. A list of some of the specific natural resource features to be analyzed in the EIS as identified through public comment can be found in Appendix B.

##### 4.4.5.1 *Data Sources Identified*

Natural land cover data sources are the 2011 USGS National Land Cover Database, USGS National Gap Analysis Program (GAP) Land Cover Data Portal, locations of Wildlife Management Areas (WMAs), Waterfowl Production Areas (WPAs) and DNR prairie conservation easements. Water resources data will be obtained from readily available databases residing with state and federal sources, including MnGeo, waterbody data from the USGS National Hydrography Flowline and Waterbody Database (NHD), US National Atlas Water Feature Line dataset, EPA's Impaired Streams Database, and the US Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) database and Minnesota NWI update. Where database information is readily available, wetlands will be tagged as associated with the MPCA wetland quality monitoring program, state or federal wetland banking program, and MPCA watershed-based TMDL Implementation Plan or WRAP areas in or near the routes. Wetlands that have a calcareous fen or are designated as wild rice wetlands will be tagged. Readily available databases will be used to tag wetlands associated with Minnesota Wetland Conservation Act or other state or federally funded easement and management plans.

Additional databases for identification and assessment of lake, stream and river resources may include DNR Public Waters Inventory, DNR LakeFinder, DNR Hydrography, Minnesota Trout Streams, Statewide Altered Watercourse, Federal Emergency Management Agency

(FEMA) Floodplain, 305b Assessments of Stream Conditions, MPCA sentinel lake designations, TMDL watersheds and waterbodies, Outstanding Resource Value Waters, and Watershed District and Watershed Management Organization boundaries. The MPCA's Index of Biological Integrity will be used to evaluate the quality of rivers and streams crossed by the preferred and alternative routes. Number of lakes and counts of river and stream crossings of various designations will be used for comparing routes.

Karst and other geologic landform datasets will be used to assess groundwater sensitive areas. Minnesota Department of Health, Minnesota Geological Survey, MnGeo, and MDNR Data Deli databases will be used to assess the proximity of routes to groundwater sensitive areas, wells and source protections areas.

Potential impacts to resources will be quantified using spatial analysis tools in ArcGIS. Appropriate mitigation measures to reduce impacts from pipeline construction and operation and accidental releases will be recommended.

#### 4.4.5.2 *Air Quality*

Air quality impacts associated with construction and operation of the proposed project and associated facilities include emissions from fugitive dust, fossil-fuel fired equipment, and pipeline and tank evaporation losses. The air quality impacts analysis will include a review and estimate of the emission inventory of all criteria pollutant, greenhouse gas and hazardous air pollutant emissions related to construction and operation of the proposed project. Air quality impacts will be reviewed in light of federal and state local air pollution standards and regulatory requirements, where applicable. Where no regulatory standards can be applied, comparative thresholds will be used. The identification of air quality impacts will take into consideration other factors such as the uniqueness of a particular location and existing environmental conditions.

#### 4.4.5.3 *Water Resources: Quality, Watersheds and Floodplains*

Streams and rivers, lakes, groundwater, and floodplains will be identified and compared across route alignments. Additionally, special resources for which federal and state laws govern restoration and protection will be identified. This includes outstanding resource value waters, sentinel lake watersheds, impaired waters for which state and federal monies are being spent, and resources being protected and restored under Minnesota's Constitutional Amendment for Clean Water, Land and Legacy. Measures to minimize adverse effects include using sound erosion control and stormwater management practices and reducing floodplain encroachment and increases in the height of the regional (100-year and 500-year) floodplain elevation. Properly minimizing adverse effects requires assessment of existing conditions such as water quality, fishery resources, floodplain functions and values, watershed stability, potential undesirable outcomes to these conditions, and proposed measures to minimize the adverse effects.

The extent to which erosion control and stormwater management measures, that is Best Management Practices (BMPs) or specific erosion control and stormwater management commitments, are proposed depends on a variety of factors, including construction timeframe and the extent of water and floodplain resources in the project's area of effect.

#### 4.4.5.4 *Wild Rice and Other Tribal Resources*

Wild rice is an important resource in northern Minnesota and a key part of Ojibwe culture. Wild rice is very susceptible to disturbance in all habitats (lake, river or wetland) and sensitive to temperature changes, contaminants or hydrology changes, all of which on their own or in combination could affect germination and production of rice beds. Construction and restoration-related impacts due to sedimentation could also affect wild rice germination rates and reduce production. The EIS will compare the potential for these impacts due to the proposed route and other alternatives.

#### 4.4.5.5 *Wetlands*

Wetlands will be identified according to the NWI and Minnesota NWI updates where available. USDA NRCS Farm Service Agency data may be readily available. Special feature wetlands will be identified as wild rice wetlands, calcareous fens, and state or federal wetland bank sites.

Wetland boundaries are available for the Applicant's preferred route from wetland boundary determinations or delineations conducted in accordance with the USACE, the agency that authorizes Section 404 wetland permits.

#### 4.4.5.6 *Natural Communities and Habitat*

Native flora and wildlife habitat will be characterized in the overall project region, within the RAA and AAA. GAP land cover, ecological subsections and public designated areas for wildlife such as WMAs and federal, state and locally identified conservation or habitat areas will be identified.

#### 4.4.5.7 *Soil Resources*

Soil orders in the project region will be summarized and mapped. To determine potential impacts to major soil classifications, soils data will be obtained from the NRCS's Major Land Resource Areas (MLRA) database. Acreage of soil orders and some lower order classifications along each route alternative will be estimated using spatial analysis tools in ArcGIS. The Digital General Soil Map of the United States or STATSGO2 will aid in development of particular soil quality information.

#### 4.4.6 *Rare and Unique Natural Resources*

Biological resources with special protection and management will be analyzed as a distinct subset of natural environment. These include state and federally listed threatened and endangered species, state natural heritage sites, species of greatest conservation need, state scientific and natural areas, and Minnesota Biological Survey sites of Biodiversity Significance.



#### 4.4.6.1 *Data Sources Identified*

Natural heritage data will come from MDNR's NHIS, and include spatial data on listed species. Scientific and natural area locations will come from the MDNR data sources. GAP land cover and methods from Tomorrow's Habitat for the Wild and Rare will be used to identify species of greatest conservation need (SGCN) habitat. Each of these features will be quantified according to the number intersected by the AAA. Regional-scale comparison will vary based upon the available dataset. Data will be available on a county basis except that determination of SGCN habitat polygons will be based on analysis within 5 miles of the alignments.

#### 4.4.6.2 *State and Federally Listed Threatened and Endangered Species*

To determine impacts on state and federally listed threatened and endangered species, data will be collected from the USFWS Information, Planning, and Conservation System (IPaC) at the county level. In addition, USFWS Species Fact Sheets, USFWS Critical Habitat data, and Natural Heritage data will also be reviewed.

#### 4.4.7 *State Natural Heritage Sites*

In addition to listed species location data, NHIS licensed data provides for identification of high-quality native plant communities, animal aggregations, and other important ecological and landform features. These data will be analyzed using ArcGIS to spatially plot their locations in relation to the Applicant's preferred route and route alternatives. Data displayed on maps or in tables will be in compliance with the data privacy requirements of the NHIS license.

#### 4.4.7.1 *Species of Greatest Conservation Need*

Minnesota's State Wildlife Action Plan identifies SGCN habitat. The associated land use cover data will be obtained and used to assess impacts to SGCN habitat.

#### 4.4.7.2 *State Scientific and Natural Areas*

Minnesota's geospatial data on scientific and natural areas will be obtained. These data will be analyzed using ArcGIS to spatially plot their locations in relationship to the Applicant's preferred route and alternatives.

#### 4.4.8 High Consequence Areas and Natural Disaster Hazard Areas

The consequences of an inadvertent release of product (natural gas, crude oil, refined products, etc.) from a pipeline can vary, depending on where the release occurs and the product involved. These releases may adversely impact or damage human health and safety, the environment and personal property.<sup>28</sup>

HCA's are areas and features where a release may have the most significant adverse consequences. HCA's for hazardous liquid pipelines include:

- Populated areas – including both high population areas (called “urbanized areas” by the US Census Bureau) and other populated areas (areas referred to by the US Census Bureau as a “designated place”).
- Drinking water sources – including those supplied by surface water or wells and where a secondary source of water supply is not available. The land area in which spilled hazardous liquid could affect the water supply is also treated as an HCA.
- Unusually sensitive ecological areas – including locations where critically imperiled species can be found, areas where multiple federally listed threatened and endangered species are found, and areas where migratory water birds concentrate.

Natural Disaster Hazard Zones are areas that present a higher risk of failure in the event of a flood or landslide. These Natural Disaster Hazard Zones are defined as being Low, Medium or High risk.

### 4.5 Impacts of Routine Construction and Operation

In the analysis of route alternatives, AAA impacts will be discussed as construction or operationally related. Opportunities for avoiding impacts by adjusting the ROW will be evaluated. Construction-related impacts will be identified by reviewing the Applicant-proposed project description details. Impacts could result from access to facilities and services, vehicle emissions and fugitive dust, noise, erosion and sedimentation, soil compaction, construction solid waste/hazardous waste, vibration and vegetation clearing. Construction material sources (borrow sites) and major utility adjustments are possible sources of additional construction-related impacts that would be considered.

The project will require the use of heavy equipment to clear land, dig ditches, install and backfill pipe, construct ancillary facilities and revegetate. These impacts would occur wherever the route is located. However, these impacts can be mitigated by construction measures, such as limiting construction work hours, using BMPs to control soil erosion, minimizing the removal of vegetation and remediating soil compaction and other soil disturbances. The potential spread of invasive species due to construction and the

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<sup>28</sup> US Department of Transportation Pipeline and Hazardous Materials Safety Administration  
<http://www.phmsa.dot.gov/>.

movement of equipment along the project route will be evaluated. Mitigation measures necessary to reduce the spread of invasive species will be identified.

Operational impacts can exist for the life of the project. These changes could be aesthetic/viewshed-based, land use restrictions, vegetative cover change in the managed ROW and associated habitat, drainage patterns, soil quality and loss of resources. Some impacts that are unavoidable can be mitigated, such as recovery of cultural artifacts and filled wetlands.

## **4.6 Method for Assessing Impacts of Crude Oil Releases**

Various approaches to evaluate the impacts of a crude oil release (large volume and small or pinhole leaks) will be applied to the preferred and alternative route alignments. Impact assessments will be based on literature reviews of large and small release volumes, including relevant case studies; a general analysis of impacts from a release to resources along the preferred and alternative routes, including impacts to groundwater; the probability of a release; and site-specific modeling of representative sites that can be used to make general comparisons to other locations. Resources to be considered in the analysis include but are not limited to residential structures, populated areas, water and biological resources, cultural resources and HCAs.

### **4.6.1 Large Volume Spill General Methods**

Large volume spill analysis will consist of spill modeling and a summary and application of methods of spill impacts analyses from other projects, such as the Keystone XL Pipeline EIS, and the Ecological and Human Health Risk Assessment of Pipeline Releases along the Line 3 Pipeline in Canada. Spill incident findings and remediation efforts from investigations near Bemidji, Minnesota, by the USGS, and the National Transportation Safety Board report on the Marshall, Michigan, spill, and other case studies will be used in the analysis.

The Applicant, NDPC, will provide data on maximum spill volumes, spill frequency and the types of crude oil being transported based on the proposed engineering and operations for the pipeline. This information will be applied to all large volume spill impact analysis methods. An estimated large volume spill footprint will be established using these data and based on methods from other current or recent past investigations, including those used by Exponent in a review of the Keystone XL Pipeline Final EIS. The methods will consider general geomorphic conditions in Minnesota to develop a general spill footprint. The analysis will also include the review of data on crude oil releases from the PHMSA database.

#### **4.6.1.1 Large Volume Spill Modeling**

Spill modeling will be conducted by RPS ASA, a global science and technology consulting firm specializing in environmental modeling, using OILMAPLAND and SIMAP modeling software. OILMAPLAND is a land and surface water spill model system (two-dimensional) that simulates oil and chemical releases from pipelines and storage facilities, providing a modeling tool for oil spills that occur on land and then migrate to streams and lakes. SIMAP provides detailed predictions of the three-dimensional trajectory, fate, biological effects, and

other impacts of spilled oil and fuels in aquatic environments. Both modeling programs meet PHMSA regulatory requirements.

To assess potential impacts associated with an accidental release, the Applicant will provide maximum spill volume estimates at seven representative sites along the preferred and alternative routes assuming a complete pipeline rupture. Data generated from modeling representative sites will be used to make broad environmental comparisons among and across routes in areas with similar features. At five of the seven sites, OILMAPLAND (the two-dimensional oil spill trajectory and dispersion model) will be used to estimate the potential spread of a projected maximum crude oil spill across land and into nearby watercourses and waterbodies. At two of the seven sites, SIMAP (the three-dimensional oil spill trajectory, dispersion and vertical mixing model) will be used to estimate the potential spread of the maximum crude oil spill across land and into nearby watercourses and waterbodies as well as the potential mixing of oil and sediment in the water column.

The models will be run for a set of scenarios that include the following crude oil types: light sweet Bakken crude oil, Cold Lake Blend and Cold Lake Winter Blend. These crude oils represent a range of oil densities and chemical compositions. Additional modeling parameters include seasonal variation to capture water flow volumes (high flow, low flow, and snow/ice covered), and a 24-hour model run with outputs at 6, 12 and 24 hours. The combinations of model inputs will result in more than 40 modeling scenarios from which to analyze potential impacts to resources along route alternatives.

#### 4.6.2 *Small Leaks*

Small or pinhole leaks will be evaluated qualitatively through a combination of literature review and relevant case studies. Factors for evaluation will include volume of the release, the length of time for detection and the types of effects on groundwater, surface water and soils. Types of remediation and recovery, if applicable, will also be presented.

Potential impacts to shallow groundwater resulting from small (pinhole) leaks will be assessed qualitatively using the key findings of work done previously in Exponent's risk assessment of the Keystone XL Pipeline. Exponent used a numerical hydrocarbon spill screening model (HSSM) to evaluate a small leak from a high-pressure crude oil pipeline. The model considered a small leak of approximately 28 bpd and determined it would reach the ground surface within several months and that a partitioned benzene plume resulting from the leak could potentially travel up to 600 feet downgradient. To be conservative, potential groundwater resources within 1,000 feet of the potential centerline of the pipelines will be qualitatively assessed. The assessment will focus on areas where groundwater within 1,000 feet is influent to streams or other waterbodies or where shallow groundwater wells are present. Minnesota data layers used to analyze potential leaks will include source water protection areas and groundwater sensitive areas.

## 4.7 **Cumulative Effects**

Cumulative effects are those that result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions and are to be

addressed pursuant to Minnesota Rule 7852.1900, subpart 3, for pipeline routing. The purpose of the cumulative effects analysis is to identify any proposed project effects that, when combined with other effects to resources in the region, may cumulatively become significant through incremental impacts. Adverse impacts that cannot be avoided as well as irreversible and irretrievable commitments of resources also will be presented.

The cumulative effects methodology will:

- Identify other actions affecting the resources, ecosystems (including aquatic ecosystems) and human settlements of concern;
- Characterize impacted resources identified in terms of their response to withstand change and capacity to withstand stress;
- Identify the important cause-and-effect relationships between human activities and resources; and
- Modify alternatives to mitigate significant cumulative effects.

Not all actions would have cumulative effects in all resource areas. Potential effects for such actions will be discussed in terms of the potentially affected resources. When the effects of a reasonably foreseeable action cannot be quantified, qualitative assessments will be provided. Past and present projects and their effects will be included as part of the baseline status of environmental resources presented in the analysis of alternatives.

In addition, the environmental document will take into account the potential cumulative impacts of both the Sandpiper and L3R Project, including impacts relative to the ROW needed to co-locate the two lines between Clearbrook and Superior along the preferred route and all alternatives.

As proposed, the L3R Project will replace 282 miles of 34-inch pipeline with 337 miles of new 36-inch-diameter pipeline. The Line 3 pipeline was originally constructed as a series of loops beginning in 1962 and placed into service in 1968.<sup>29</sup> The integrity management plan for Line 3 has seen an increasing number of integrity digs and repairs in recent years. Starting in 2008, Enbridge voluntarily reduced the pressure and capacity of Line 3 to 390,000 bpd. The L3R Project will restore the line to its historical operating capacity of 760,000 bpd from its current capacity of 390,000 bpd.

Associated facilities for the L3R Project include upgrading four existing pump stations and adding an additional four pump stations at new locations. The project will also include 27 safety valves.

Enbridge's preferred route for the L3R pipeline follows the existing Enbridge mainline corridor west of Clearbrook, Minnesota, in Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater counties to the terminal in Clearbrook. East of Clearbrook, the preferred route follows approximately 75 percent of existing utility corridors in Hubbard, Wadena, Cass,

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<sup>29</sup> See Chapter 2 of the Line 3 Replacement Route Permit Application to the Minnesota Public Utilities Commission.

Crow Wing, Aitkin and Carlton counties. If a Route Permit is issued for the preferred route of the Sandpiper pipeline, the L3R pipeline will be adjacent to Sandpiper east of Clearbrook to the Minnesota-Wisconsin border; the existing Line 3 pipeline will be permanently deactivated and remain in place.<sup>30</sup>

Cumulative impacts of high-voltage transmission lines and substations needed to serve proposed Sandpiper pump stations also will be analyzed. Other reasonably foreseeable projects will be identified by searching local land use plans, current permit applications and approved, but not built, projects in the areas of the preferred and alternative routes.

## 5.0 Special Studies or Research

The EIS will incorporate the results of the following special studies:

1. Sandpiper Pipeline and Line 3 Replacement Projects: Assessment of Accidental Releases: Technical Report
2. Sandpiper Pipeline and Line 3 Replacement Projects: Assessment of Potential Pinhole Release on Groundwater
3. Emergency Response Plan
4. An updated economic analysis of the need for the proposed project considering other proposed or planned pipeline projects out of the Williston Basin.
5. An independent assessment of the technical and economic feasibility of System Alternatives as described above in Section 3.

## 6.0 Identification of Phased or Connected Actions

The EIS will describe and include the impacts of several new proposed transmission lines that would supply electric power to the new pipeline pump stations for this project. L3R will be discussed in how it may be viewed as a phased or connected action based on the construction schedule; however, pursuant to Minnesota Rule 4410.2000, subpart 4, the complete analysis for that project will be conducted separately.

## 7.0 Government Permits and Approvals

The EIS will identify all known required permits and approvals. Some permit information may be collected and reviewed concurrently with the EIS preparation. However, the EIS will not necessarily contain all the information needed for a decision on the CN and Route Permit. No permits have been designated to have all information developed concurrently with the

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<sup>30</sup> See Chapter 6 of the Line 3 Replacement Route Permit Application to the Minnesota Public Utilities Commission.

preparation of this EIS per Minnesota Rule 4410.2100, subpart 6(C), nor will any require a record of decision pursuant to Minnesota Rule 4410.2100, subpart 6(D).

Table 2 provides a list of known federal, state and local approvals, certifications and financial assistance required for the project.

<b>TABLE 2 Permits and Approvals Required</b>			
<b>Unit of Government</b>	<b>Type of Application</b>	<b>Status</b>	<b>Reason Required</b>
US Army Corps of Engineers (USACE) – St. Paul District and MPCA	Section 10/404 Individual Permit and associated state 401 Individual Water Quality Certification	Application submitted and determined complete (December 17, 2015)	Authorizes discharge of dredged and fill material into waters of the United States, including wetlands, and crossing of navigable waters of the United States.
US Fish and Wildlife Service (USFWS)	Section 7 ESA Consultation (Federal endangered species)	Consultation ongoing	Establishes conservation measures and authorizes, as needed, take of federally protected species
	Bald Eagle Removal Permit	Pending submittal	Allows for removal of a known bald eagle nest in proximity to construction activities
Minnesota Public Utilities Commission (PUC)	Certificate of Need	Application submitted	Determines need for the pipeline, including questions of size, type and timing
	Route Permit	Application submitted	Authorizes construction of the pipeline along a specific route, subject to certain conditions
Minnesota Department of Natural Resources (MDNR)	License to Cross Public Waters	Application submitted	50 year license that allows for crossing of public waters with proposed utility
	License to Cross Public Lands	Application submitted	50 year license that allows for crossing of public lands with proposed utility
	Water Appropriation Permit – Pipeline and Facilities	Pending submittal	Authorizes withdrawal and use of water from surface or ground sources
	State Endangered Species Permit and Avoidance Plan	Pending submittal	Outlines plans for avoidance, minimization, and mitigation of take of state-listed species
	Osprey Nest Disturbance Permit	Pending submittal	Allows for removal of a known osprey nest
	Fen Management Plan	Pending submittal	Outlines plans for avoidance, minimization, and mitigation of impacts to fens
Minnesota Pollution Control Agency (MPCA)	Clearbrook West Terminal – Option A Registration Permit and New Source Performance Standards Notifications and Submittals	Pending submittal	Authorizes operation of the terminal and compliance demonstration requirement for new sources of air emissions under the CAA
	NPDES Individual Construction Stormwater, Hydrostatic Test,	Pending submittal	Authorizes ground disturbance with approved protection measures to manage soil erosion and stormwater discharge on construction site; discharge of water from



<b>TABLE 2 Permits and Approvals Required</b>			
<b>Unit of Government</b>	<b>Type of Application</b>	<b>Status</b>	<b>Reason Required</b>
	and Trench Dewatering Permit – Pipeline Construction		hydrotesting activities; and removal of water that may accumulate in pipeline trench
	NPDES General Construction Stormwater Coverage – Facilities	Pending submittal	Authorizes ground disturbance with approved protection measures to manage soil erosion and stormwater discharge on construction site
	NPDES General Construction Stormwater Coverage – Pipeyards, Staging Areas, and Contractor Yards	Under review	Authorizes ground disturbance with approved protection measures to manage soil erosion and stormwater discharge on construction site
Minnesota State Historic Preservation Office (SHPO)	Cultural Resources Consultation, NHPA Section 106 Clearance	Consultation ongoing	Ensures adequate consideration of impacts to significant cultural resources
Minnesota Department of Agriculture (MDA)	Agricultural Protection Plan	Consultation initiated	Establishes measures for agricultural protection
Minnesota Department of Transportation (MnDOT)	Road Crossing Permits	Pending submittal	Authorizes crossings of state-jurisdictional roadways
Minnesota Department of Health (MDH) and Wrenshall and Sundruds Court Drinking Water Supply Management Area	Drinking Water Supply Management Area/Wellhead Protection Area Consultation	Consultation only (in progress)	Ensures pipeline construction and operation are compatible with goals of relevant plans
Mississippi Headwaters Board	Local Land Use Review	Consultation only (in progress)	Ensures compatibility with land use plan
Red Lake and Wild Rice Watershed Districts	Watershed District Permits	Pending submittal	Authorizes crossing of legal drain and ditches within watershed
Minnesota Board of Water and Soil Resources/WCA Local Governmental Units	Notice of Intent to Utilize Federal Approvals for Utilities Project Exemption	Notice submitted	Notice of use of exemption required
Local/County	Permits pertaining to off-ROW yard use	Pending submittal	Ensures compatibility with relevant land use plans

## 8.0 Environmental Impact Statement Schedule

A tentative schedule for development and issuance of the EIS is outlined in Table 3. The schedule is contingent upon a number of factors; unforeseen circumstances may alter it.

<b>TABLE 3 Tentative Schedule</b>	
Scoping EAW and Draft Scoping Decision Document issued	April 11, 2016
Public Scoping Meeting(s)	April-May 2016
Close of Public Comment Period	May 26, 2016
Final Scoping Decision Document	June 2016
EIS Preparation Notice Published (Start of 280-day EIS process)	August 2016
Draft EIS Issued for Public Review and Comment	January 2017
Final EIS Issued	May 2017
EIS Adequacy Determination	June 2017

## **Appendix A**

### **Figures**

Figure 1: Sandpiper Previously Accepted System Alternatives

Figure 2: Sandpiper Previously Accepted Route Alternatives

# Proposed System Alternatives

MANITOBA

ONTARIO

N O R T H D A K O T A

M I N N E S O T A


S O U T H D A K O T A

W I S C O N S I N


I O W A


I L L I N O I

## Legend


 Sandpiper proposed route

 Line 3


 System alternatives


 Applicant preferred route for Sandpiper and Line 3

 State boundaries

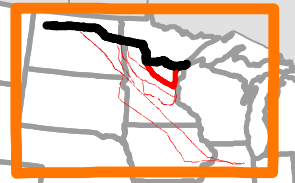
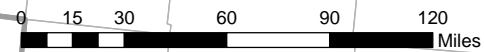
 County boundaries

 Cities

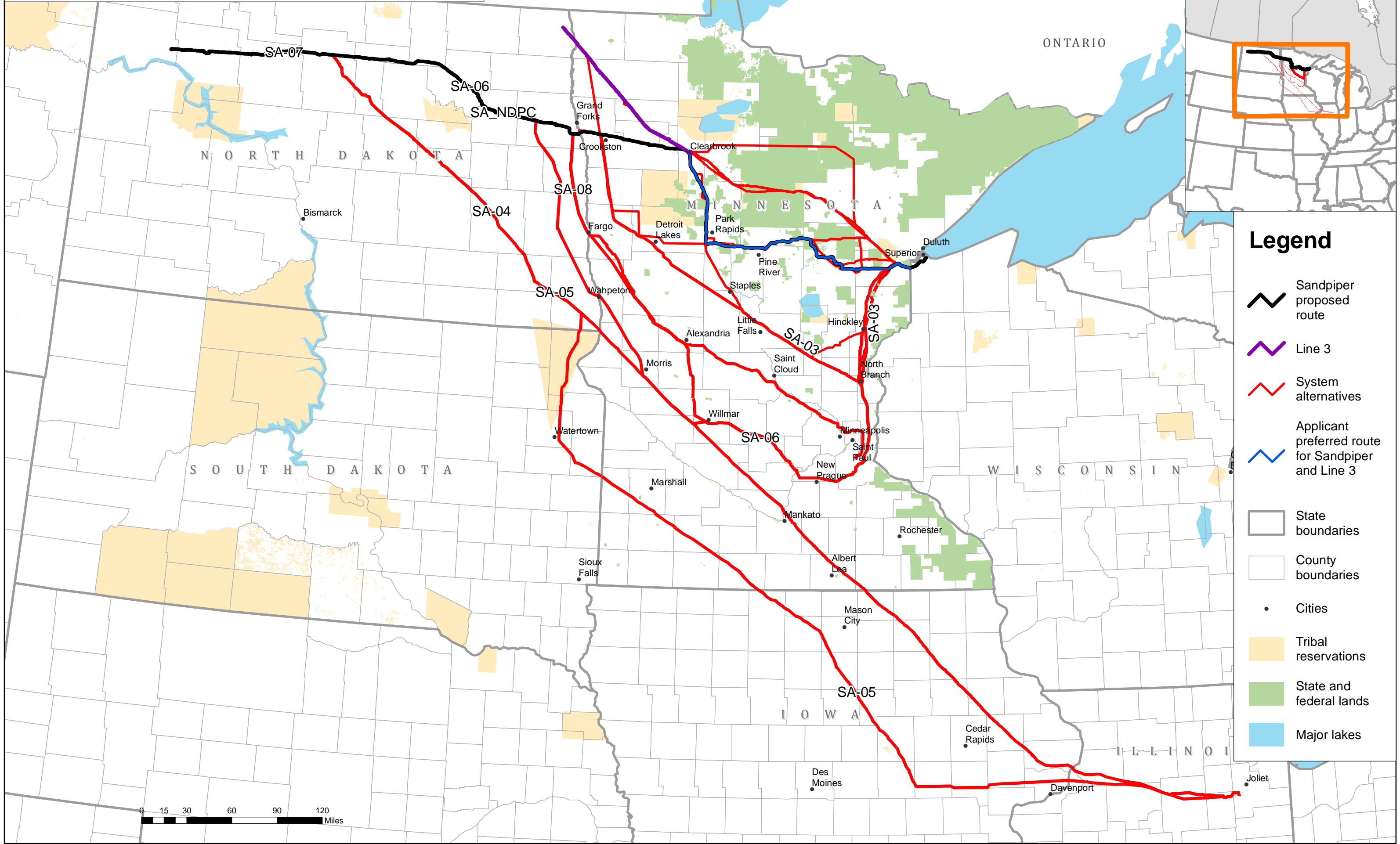
 Tribal reservations

 State and federal lands

 Major lakes



384













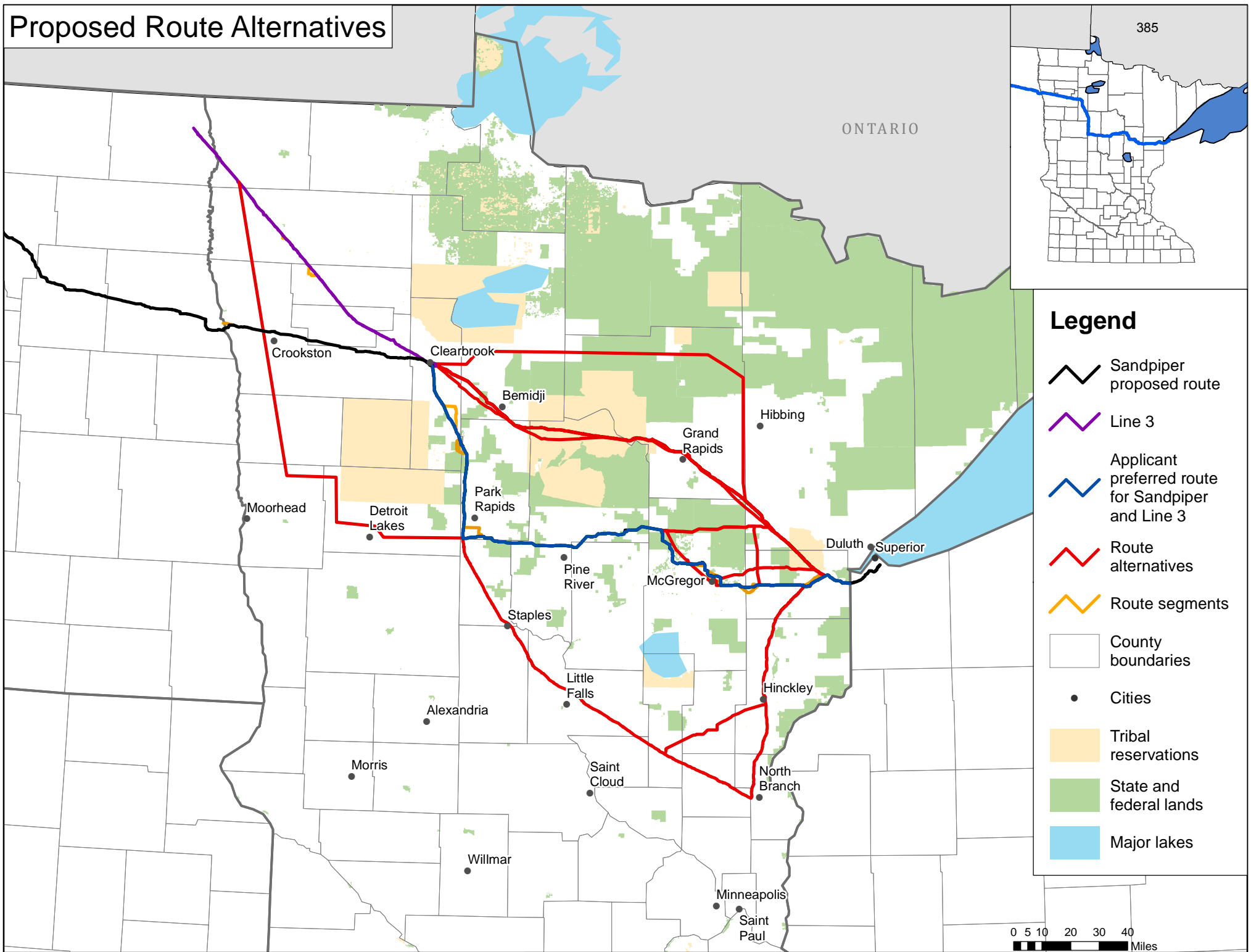
# Proposed Route Alternatives

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ONTARIO

## Legend

-  Sandpiper proposed route
-  Line 3
-  Applicant preferred route for Sandpiper and Line 3
-  Route alternatives
-  Route segments
-  County boundaries
-  Cities
-  Tribal reservations
-  State and federal lands
-  Major lakes



0 5 10 20 30 40 Miles

## Appendix B

### Preliminary Table of Contents

A draft outline of the contents for the EIS, subject to change, is provided below:

- I. Cover Sheet
- II. Table of Contents
- III. Acronyms, Abbreviations, and Definitions
- IV. List of Preparers
- V. Executive Summary
  
- I. General Description of Project
  - A. Project Description
  - B. Project Purpose
  - C. Project Costs
  - D. Project Schedule
  - E. Project Permits and Approvals
  - F. Construction and Operation Methods
  - G. Decommissioning of Line 3 Pipeline
- II. Regulatory Framework
- III. Alternative Screening
  - A. Screening Criteria and Process
  - B. Proposed Alternatives
  - C. Comparison of Alternatives
  - D. Alternatives Dismissed from the EIS and reasoning
  - E. Alternatives Carried Forward
- IV. Route Alternatives
  - A. No Action Alternatives
  - B. Applicant's Preferred Route
  - C. Route Alternatives
- V. Affected Environment, Potential Impacts, and Mitigation Measures
  - A. Human Settlements
    1. Planning and Zoning
      - a. County and Local Comprehensive Planning and Zoning
      - b. Overlay Districts
      - c. Existing and Future Land Use
      - d. Watershed Districts/Watershed Management Organizations
    2. Noise
    3. Aesthetics/Visual Resources
    4. Housing
      - a. Displacement
      - b. Property Values
    5. Transportation and Public Services
      - a. Roads and Highways
      - b. Utilities

- c. Emergency Services
      - d. Airports
    - 6. Environmental Justice
    - 7. Public Health and Safety
      - a. Existing Contaminated Sites
      - b. Solid Waste
      - c. Waste Disposal
      - d. Hazardous Materials and Hazardous Waste Generation
      - e. Decommissioning
      - f. Spill Analysis and Environmental Impacts
        - i. Large spills
        - ii. Pinhole Leaks
  - B. Parks, Trails, and Recreational Areas
    - 1. Federal Recreational Areas
    - 2. State Parks and State Forests
    - 3. Wildlife and Aquatic Management Areas
    - 4. Scientific and Natural Areas
    - 5. State Designated Rivers
    - 6. State Canoe and Boating Routes (Water Trails)
    - 7. State, Regional, and Local Bicycle and Pedestrian Trails
    - 8. Snowmobile Trails
    - 9. Scenic Byways
  - C. Cultural Resources
    - 1. Tribal Considerations
    - 2. Archaeological Resources
    - 3. Historic Resources
  - D. Economics
    - 1. Agriculture
    - 2. Forestry
    - 3. Mining/Mineral Resources
    - 4. Recreation and Tourism
    - 5. Income
    - 6. Employment
  - E. Natural Resources
    - 1. Water Resources
      - a. Groundwater
        - i. Depth to Groundwater
        - ii. Watersheds
        - iii. Aquifers
        - iv. Wells
        - v. Wellhead Protection Areas and Drinking Water Supply Management Areas
      - b. Streams, Rivers, and Floodplains
      - c. Lakes and Other Waterbodies
      - d. Wetlands
      - e. Stormwater, Stormwater Discharge, and Water Appropriation
    - 2. Geology and Soils

- a. Bedrock and Surface Geology
- b. Mineral Resources
- c. Estimated Volume and Acreage of Soil Excavation and/or Grading
- d. Paleontology
- e. Unconfined/Shallow Aquifers
- f. Steep Slopes
- g. Soils and Soil Characteristics
- h. Erosion and BMPs
- 3. Flora
  - a. Vegetation Cover
  - b. Ecological Classifications
  - c. Sensitive/Native Plant Communities
  - d. Noxious Weeds and Invasive Species
- 4. Fauna
  - a. Habitat/Fragmentation
  - b. Typical Wildlife
  - c. Fisheries
  - d. Trout Streams
  - e. Migratory Birds
- 5. Unique natural resources
  - a. State and Federal Threatened and Endangered Species
  - b. Species of Greatest Conservation Need
  - c. Minnesota County Biological Survey
  - d. Sites of Biodiversity Significance
  - e. Wild Rice
- 6. High Consequence Areas and Natural Disaster Hazard Areas as defined by PHMSA
- 7. Air Quality
  - a. Stationary Source Emissions
  - b. Mobile Source Emissions
  - c. Dust and Odors
- E. Climate Change
- F. Construction Impacts
- G. Cumulative Effects
- VI. Comparative Environmental Consequences by Alternative



March 25, 2016

Chuck Diessner  
24328 Hazelwood Drive  
Park Rapids, MN 56470

Chairman David Frederickson  
Minnesota Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55155

VIA EMAIL

Re: EIS for: Application of North Dakota Pipeline Company LLC  
For a Certificate of Need and Route Permit for the  
Sandpiper Pipeline Project. PUC Docket No.  
PL6668/CN 13-473/RP 13-474; and

Application of Enbridge Energy, Limited  
Partnership For a Certificate of Need and Route  
Permit for the Line 3. PUC Docket No. PL 9/CN  
14-916 /RP 15-137.

Dear Chairman Frederickson:

I am filing this letter with the EQB on my own behalf and in support of Willis Mattison's requests set forth in his letter to the EQB dated March 10<sup>th</sup>.

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My name is Chuck Diessner and I live on Potato Lake in Park Rapids, Minnesota. I have followed very closely the PUC process regarding the captioned Applications in light of the close proximity of the Applicants' preferred Sandpiper and Line 3 pipelines routes relative to Potato Lake and other critical environmental conditions and natural resources enjoyed by the public.

I am not against either of the proposed pipelines; however, I do object to the Applicants' preferred pipeline routes because of the potential serious damage a spill, leak or other event could cause to our environment and natural resources.

I believe that in order to protect the best interests of the state and the public with regard to the preparation of the EIS for these pipeline projects, it is imperative that the EQB (i) remove the Public Utilities Commission (PUC) as the RGU and the Department of Commerce (DOC) as its agent and (ii) designate the Department of Natural Resources (DNR) and the Minnesota Pollution Control Agency (MPCA) as the joint RGU.

### **REMOVAL OF PUC AS THE RGU**

The PUC should be removed as the RGU because it:

- a. failed to remove the DOC as its agent even in light of the DOC's failures as described in Factor 1 below and as requested by intervenors;

Page 3

b. required an illegal environmental process before considering the Sandpiper Certificate of Need and refused to order an EIS at the beginning of the Sandpiper Pipeline process as requested by Friends of the Headwaters (FOH) and other intervenors on numerous occasions;

c. caused FOH to obtain a Court of Appeals decision which required that the requested EIS be prepared;

d. failed to require the DOC to perform the duties it assigned to the DOC as described in Factor 1 below;

e. failed to take into consideration Factors 2 and 3 described below when it appointed the DOC as its agent; and

f. failed to perform its duties as set forth in Mr. Mattison's request.

Since the PUC failed to act in the best interests of the state and public in these ways, the EQB must remove the PUC as the RGU and the DOC as its agent and appoint the DNR and MPCA as the joint RGU. Words alone do not provide the protection of the state and public as required under Minnesota law and rule. It is only the PUC's actions that determine if it is acting in the best interest of the state and public and those actions to date clearly show that the PUC has failed in this regard and, therefore, the PUC must be removed as the RGU.

## **REMOVAL OF THE DOC AS THE AGENT OF THE RGU**

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Also, I strongly believe that the only way to ensure that the best interest of the state and public will be protected in the preparation of the EIS is for the DOC to be removed as the RGU's agent.

The PUC, at its December 17<sup>th</sup> hearing, stated that everything possible must be done to insure that the new process for considering the Applications is robust, comprehensive, high quality, independent, fair, avoids further delay as much as possible without sacrificing quality, involves the public and eliminates the likelihood of a future legal challenge ("Process Goals"). Again, these are the right words, but they mean nothing if the actions of the PUC and DOC are not consistent with such words.

The PUC's decision to appoint the DOC as its agent to prepare the EIS is not consistent with achieving any of the Process Goals or in the best interest of the state or the public because (i) the DOC has demonstrated bias and prejudice in support of the Sandpiper Application throughout its process regarding numerous environmental matters, (ii) the DNR and MPCA clearly qualify under Minnesota Rules to be appointed as the RGU and (iii) the DOC has shown a shocking lack of understanding of the law and rules relating to MEPA and an EIS.

If the RGU is going to achieve the Process Goals, the EQB must remove the DOC as the agent of the RGU because of the foregoing three factors as explained below.

## Page 5

**Factor 1:** The DOC's is not independent as shown by its bias and prejudice in the Sandpiper process. Some examples include the following:

- a. In the DOC's initial report and recommendations to the PUC regarding which routes, route alternatives and system alternatives should be considered as part of the Sandpiper process, it failed to include the serious concerns, objections and recommendations of the DNR and MPCA. There is no possible justification for this failure.

When the PUC became aware of such failure it told the DOC in a hearing that the PUC could not make a decision in the Sandpiper matter without taking into consideration the comments and recommendations of the DNR and MPCA, the two highest state agencies responsible for protecting our natural resources and environment and with the most expertise in these matters. The PUC then told the DOC to take into consideration those agencies comments and to include the DNR's and MPCA's preferred system alternatives SA-03 and SA-04 and any other system alternatives those agencies recommended be considered as part of the process.

- b. When the PUC decided in September, 2014 that an environmental report ("ER"), not an EIS, was to be prepared by the DOC, Chair Heydinger stated that it was necessary for the DNR and MPCA to assist in the development of the record by participating in the ER; that

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she respected their views that the company's proposal has significant potential environmental impacts and there may be better choices; and that she wanted the ER to "help assure that there is a robust record on what the potential environmental consequences may be of different alternatives." Notwithstanding these requirements:

- (1) the DOC did not include the DNR and MPCA in the preparation of the ER.
- (2) The DOC refused to provide the DNR, MPCA and with certain background information used to prepare the ER because it said that such information was confidential. As a result the ER was useless to the DNR, MPCA and other requesting parties and prevented the ER from helping to create a robust record.
- 3) The DOC's approach of applying equal weight to all the environmental conditions and natural resources regarding potential environmental impacts was not accepted by the DNR, MPCA and other intervenors as an appropriate way to compare system alternatives . This approach prevented the ER from providing a "robust record on what the potential environmental consequences may be of different alternatives."

**Factor 2:** It is my understanding that the DNR and MPCA have far greater expertise than the DOC alone or with the PUC in

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“analyzing the potential impacts” of the oil pipelines on the environment and natural resources (such as rivers, lakes, wetlands, wild rice, aquifers, etc.) that will be included in the oil pipeline EIS (the “Oil Pipeline Potential Impacts”). It is only this type of expertise that is relevant. The PUC acknowledged during its hearings that the DNR and MPCA have the most expertise in protecting our natural resources and environment. have greater expertise in pipeline environmental review than any other Minnesota agency

**Factor 3:** The DOC demonstrated its shocking lack of understanding of even the most basic requirements of MPEA and an EIS as evidenced by its Request for Clarification filed with the PUC. If the DOC cannot handle even this most basic of issues under MEPA and an EIS, what is the DOC going to do when it faces a complicated issue?

**Potential Additional Factor:** It is my understanding that the DOC recently hired John Wachtler, a former vice president of Barr Engineering, to head the Energy Environmental Review & Analysis (EERA) division of the DOC and that the EERA will be responsible for the preparation of the EIS. The hiring of Mr. Wachtler may create a conflict of interest for the DOC to act as the PUC’s agent because (i) while Mr. Wachtler was at Barr Engineering the company was an environmental consultant for the Applicants and one of its employees testified as an expert for NDPC in the Sandpiper contested hearing and (ii) Barr Engineering may still be an environmental consultant for the Applicants and may provide information on behalf of the Applicants regarding the EIS. The EQB needs to determine if a conflict of interest exists and, if it does, then it must remove the

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DOC as the RGU's agent on this basis alone.

It is clear from the EQB's summary of Minnesota Rules and the materials filed by Mr. Mattison that the neither the law or rules require the PUC to serve as the RGU, there is clear authority to remove the PUC as the RGU and the DOC as its agent and appoint the DNR and MPCA as the joint RGU, and the DNR and MPCA qualify under Minnesota Rules to be appointed the RGU in this matter.

The process for considering these Applications is unique and covers new ground in many ways for the PUC and DOC, especially the need for and preparation of an EIS. The preparation of a pipeline EIS is not unique or cover new ground for either the DNR or the MPCA.

It is time to stop taking chances on the PUC's and DOC's ability to get things right for this unique situation. Unfortunately, history has shown the state and the public that the PUC and the DOC cannot be relied upon to get it right on how to prepare a pipeline EIS. The EIS process is not intended to be a learning exercise for the PUC and the DOC.

This is the perfect situation where the EQB can make sure that the pipeline EIS in this matter is prepared in the best interest of the state and the public by the highly qualified, experienced and independent DNR and MPCA. If this change is not made by the EQB there is no doubt in my mind that mistakes will continue to be made, this matter will be tied up in numerous delays and there will be a high likelihood of future litigation.



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Thank you for considering my comments.

Sincerely,



Charles F. Diessner

Chuck Diessner  
612-790-6565  
[cfdiessner@gmail.com](mailto:cfdiessner@gmail.com)

**cc: VIA EMAIL**

Will Seuffert  
Environmental Quality Board

Courtney Ahlers Nelson  
Environmental Quality Board

May 1, 2016

Chuck Diessner  
24328 Hazelwood Drive  
Park Rapids, MN 56470

Board of Directors  
Environmental Quality Board  
C/O Will Seuffert  
Minnesota Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55155

Re: EIS for: Application of North Dakota Pipeline Company LLC  
For a Certificate of Need and Route Permit for the  
Sandpiper Pipeline Project. PUC Docket No.  
PL6668/CN 13-473/RP 13-474; and

Application of Enbridge Energy, Limited  
Partnership For a Certificate of Need and Route  
Permit for the Line 3. PUC Docket No. PL 9/CN  
14-916 /RP 15-137.

Dear Directors:

I would like to thank you for the April 20th meeting and giving everyone the time needed to provide their comments to the Board.

I am sure you now understand why we say that the PUC and the DOC have **lost the PUBLIC TRUST** in the PUC process relating to the proposed pipelines described above.

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I believe that the following analysis of the comments at the meeting and the materials in your Board packet confirm that (i) the requirements of Minnesota Rules 4410.0500, subdivision 6 (“Rule 6”) have been satisfied and (ii) in order protect the public’s interest in its natural resources and environment he EQB must appoint a new RGU as requested on page 10.

### **WHY CONSIDER APPOINTING A NEW RGU?**

This situation is extremely unique because an illegal environmental report was prepared by the Department of Commerce (DOC), that report was adopted by the Public Utilities Commission (PUC) and used throughout the PUC’s illegal process on the Sandpiper, including the public comments, the contested evidentiary hearing, the ALJ report and the PUC’s decision to issue the Certificate of Need (CON) and to limit the route alternatives to be considered in the Route Permit (RP) process.

The Court of Appeals subsequently unanimously decided (consistent with the numerous requests by the Friends of Headwaters (FOH) and the other intervenors) that an EIS had to be completed before the PUC could take action on the CON. As a result, the previous decisions on the CON and RP are void, an EIS must be prepared and the PUC has to proceed with a totally new process for the Sandpiper before it can take any further action.

All of this creates a very significant conflict of interest for the PUC and the DOC because they have already decided a number of the environmental and other issues relating to the PUC’s

Page 3

issuing the CON and approving RP limitations. It is not realistic or human nature to think that the DOC and PUC will not be influenced significantly by their prior analysis and decisions on how they approach the EIS. To protect the public interest in the environment and natural resources the EIS must be prepared by qualified experts that are independent in order to “preserve the integrity and independence of the commission decision making and to promote public confidence in the objectivity of the commission decisions” as required by Minn Rule 7845.0300.

Additionally, the following examples clearly show that there were numerous improper actions by the DOC and the PUC that were not in the best interest of the public or the state. This misconduct is the reason why the EQB must consider appointing a new RGU.

**Examples of the DOC’s misconduct includes:**

1. The DOC excluded the Department of Natural Resources (DNR) and Minnesota Pollution Control Agency (MPCA), the two highest state agencies responsible for protecting our natural resources and environment, and their serious concerns, objections and recommendations regarding the Sandpiper from the following critical aspects of the Sandpiper process:
  - a. The DOC did not include in its report to the PUC of its recommended route alternatives and system alternatives any of the MPCA and DNR comments, objections and

- b. recommendations on what routes should be considered part of the PUC process; and
  - c. The DOC did not include the MPCA and DNR in the DOC's preparation of the environmental report. This was completely contrary to the PUC's instructions to the DOC that the MPCA and the DNR must participate in the preparation of the environmental report.
2. The DOC refused to provide the DNR, MPCA and intervenors with critical background information they requested in order to understand the environmental report because the DOC said the information was confidential. Remember that the PUC requested the report for the benefit of the PUC, all parties and the public to create a "robust record." So how can any part of the report be confidential?
  3. The DOC withheld important information from the public as being confidential during periods when it would have been relevant in the PUC process. After the PUC process had moved beyond the importance of the information, it was released by the MPCA when requested because the MPCA said the information was not confidential.
  4. The DOC failed to include in its environmental report critical information regarding ground water contamination known to at least one of its key employees who helped author a report and map which showed that the Sandpiper preferred route goes through the area of the highest susceptibility for ground water contamination in Hubbard County

Page 5

and to the East.

5. The DOC proceeded with a completely illegal process by performing only an environmental report rather than an Environmental Impact Statement (“EIS”) that was legally required.
6. The DOC has not responded to my February 25<sup>th</sup> letter claiming that it may have a conflict of interest in being the agent of the RUG to prepare the EIS because it hired the vice president of the Applicants’ environmental consultants to lead the DOC’s preparation of the EIS. At a minimum there is the appearance of a conflict and Minn. Rule 77845.0300 provides that the “Commissioners and employees should maintain high standards of conduct to prevent a conflict or the appearance of a conflict..”

I request that the EQB have someone, such as a special outside counsel, look at these improper DOC actions to determine if any of them are illegal because they are not consistent with the DOC’s duties and responsibilities to act in the best interest of the public in the environment and natural resources and to “advocate on behalf of the public.” If there is a belief that any of DOC’s improper actions may potentially be illegal, then I believe that the DOC must immediately resign as the PUC’s agent or be removed by the PUC as its agent or the EQB must appoint a new RGU on this basis alone.

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**Examples of the PUC's misconduct includes:**

1. The PUC accepted the DOC's environmental report knowing that the MPCA and DNR did not participate in the preparation of the report as required by the PUC.
2. PUC proceeded with an illegal environmental report and process for the Sandpiper. That illegal process included the public comments, evidentiary hearing, ALJ report and the PUC's improper decision to grant the CON and limit the routes to be consider in the RP.
3. The PUC has not posted on edockets or responded to my February 29<sup>th</sup> letter claiming that the DOC may have a conflict of interest because it hired the vice president of the Applicants' environmental consultants to lead the DOC's preparation of the EIS. Clearly, there is at least the appearance of a conflict contrary to Minn Rules as provided in paragraph 6 of page 5.
4. The PUC has refused since March 1st to post on the edocket my letter to the Commissioners regarding replacing the RGU even though the PUC staff assured me it would be posted.
5. The PUC appointed the DOC as its agent to prepare the EIS even though it had knowledge of the seriousness of the historical DOC misconduct that was not in the best interest of the public.

## Page 7

### **WHAT IS THE MEANING OF THE SUBDIVISION 6 EXCEPTION**

Rule 6 relates only to environmental reviews and provides that the **“EQB may designate a different RGU for the project if it determines that the designee has greater expertise in analyzing the potential impacts of the project.”**

**“Expertise”** according to Webster’s means **“a high level of skill or knowledge.”**

Under Rule 6 the greater expertise (the high level of skill or knowledge) must relate to identifying the potential environmental impacts for scoping these oil pipelines projects (“Projects”), doing the environmental field work and analysis of the magnitude, probability, mitigation and alternatives of those potential oil pipeline impacts on the environment and natural resources.

### **WHO HAS THE GREATER EXPERTISE IN ANALYZING THE POTENTIAL ENVIRONMENTAL IMPACTS**

Mr. Mattison’s testimony from time 18:52 through 27:37 and his associated slides from 101 through 116 provide an excellent explanation of why the MPCA and the DNR have greater expertise under Rule 6 than the PUC and DNR in analyzing the potential oil pipeline environmental impacts in the EIS for these Projects.

The following are additional examples of why the PUC and



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DOC do not have the greater expertise under Rule 6:

- 1.** The DOC demonstrated its shocking lack of understanding of even the most basic requirements of MPCA and an EIS as evidenced by its Request for Clarification filed with the PUC. The request was for the PUC to advise the DOC what system alternatives it wanted in the scoping for the EIS! It is illegal for the PUC to make such a decision before the scoping is completed.
- 2.** The DOC has historically excluded the MPCA and the DNR from the PUC process even though the PUC required that they participate in the process. Even though the DNR and MPCA are the two highest state agencies to protect our natural resources and environment, the DOC refuses to recognize their greater expertise and regulatory perspective relating to oil pipelines and the Projects.
- 3.** The environmental reviews conducted by the PUC and listed in Attachment A to its letter to the EQB dated March 25, 2016 are irrelevant because they were environmental reviews that did not include the environmental impacts of an oil pipeline as required in the EIS for the Projects.
- 4.** The examples of the various EISs prepared by the DOC for large energy projects are irrelevant because they do not include environmental impacts of an oil pipeline as required in the EIS

- for the Projects.
5. PUC's review of environmental reports, alternative environmental reports and large power line EISs are irrelevant for the same reasons as provided in paragraph 4 above and because just doing a review of reports is not evidence of any high level skill and knowledge as required by Rule 6.
  6. The work of the DOC and PUC in making CON and RP decisions is also irrelevant for the same reasons as provided in paragraph 4 above and because just making decisions is not evidence of any high level of skill or knowledge as required by Rule 6.
  7. Both the PUC and DOC have shown a basic lack of knowledge of when an EIS is required under MEPA and MN Law . The Court of Appeals had to tell the PUC and the DOC that an EIS is required for the Projects.
  8. The PUC stated that the environmental report to be prepared by the DOC was to "help assure that there is a robust record on what the potential environmental consequences may be of different alternatives." Showing a total lack of skill and knowledge regarding environmental impacts the DOC's environmental report provided that all environmental conditions are rated equally—yes, equally! This means that the DOC's experts were telling the PUC, the parties and the public that if an oil pipeline crossed a ditch with water, the Mississippi, a trout stream, a

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watershed, or a lake that the potential impact on the environment would be the same! Really?

9. The PUC's lack of expertise under Rule 6 is the fact that it accepted not only the environmental report rather than an EIS, but it accepted the DOC's analysis described in paragraph 8 above!
10. Finally, the misconduct of the DOC and PUC described at paragraph 1 on page 3, at paragraph 5 on page 4 and at paragraphs 1 and 2 on page 5 show the lack of their expertise under Rule 6.

The MPCA and DNR claim that the Memorandum of Understanding among the DOC, MPCA and the DNR is in the best interest of the public. That is simply just not true because legally under the MOU the DOC continues to be totally in charge of the EIS. The DOC will decide the extent to which the DNR and MPCA and anyone else will assist in the preparation of the EIS. This means that under the MOU the DOC can continue its historical actions of ignoring the MPCA and the DNR. The MOU provides that the DOC will negotiate the level of assistance, such as for the MPCA and the DNR, and cost for the EIS with the Applicants and the DNR and MPCA will not have a seat at the table. To date the DOC has supported the Applicants desire to eliminate the MPCA and DNR involvement in the environmental matters, the environmental report, and now especially the EIS.

## Page 11

### **DIFFICULT DECISION**

This is not a difficult decision on the facts. I assume that you are as appalled as those of us that came before you asking for help to protect the public's interest in its natural resources and environment. I understand this may be a difficult decision for some of the agencies represented on the Board because of your relationships with one another. However, those relationships and protecting the PUC or the DOC should have nothing to do with your decision.

Now it's up to the EQB to have the courage do what you know is right by granting my request below and thereby telling the DOC, PUC, the parties and the public that these types of actions will not be tolerated and begin the process of trying to **RESTORE THE PUBLIC TRUST.**

### **MODIFIED REQUEST**

I believe that the EQB, after consulting with the MPCA and the DNR, is best able to determine among the MPCA and the DNR who should be the new RGU. Therefore, as I stated in my testimony on April 20<sup>th</sup>, I request that the EQB adopt resolutions that provide as follows:

1. The EQB determines that a new RGU should be designated to prepare the EIS for the projects; and
2. The EQB designates \*\*\_\_\_\_\_ as the new RGU to prepare the EIS for the Projects.

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\*\* Either the MPCA and DNR as a joint RGU; or the MPCA as the RGU with an interagency agreement with the DNR to assist with the preparation of the EIS; the MPCA as the RGU; or any other combination of the MPCA and the DNR or either agency alone.

Thank you for considering my comments and modified request.

Sincerely,

*Charles f. Diessner*

Charles F. Diessner  
612-790-6565  
[cfdiessner@gmail.com](mailto:cfdiessner@gmail.com)

**cc:** Courtney Ahlers Nelson  
Environmental Quality Board



Page 12

\*\* Either the MPCA and DNR as a joint RGU; or the MPCA as the RGU with an interagency agreement with the DNR to assist with the preparation of the EIS; the MPCA as the RGU; or any other combination of the MPCA and the DNR or either agency alone.

Thank you for considering my comments and modified request.

Sincerely,



Charles F. Diessner  
612-790-6565  
[cfdiessner@gmail.com](mailto:cfdiessner@gmail.com)

**cc:** Courtney Ahlers Nelson  
Environmental Quality Board



March 25, 2016

William Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Dear Mr. Seuffert:

I am responding to your March 16, 2016, letter requesting information about the Minnesota Public Utilities Commission's (Commission) role as the responsible governmental unit (RGU) for two proposed oil pipeline projects: the 612-mile crude oil pipeline between Tioga, North Dakota and Superior, Wisconsin proposed by North Dakota Pipeline Company (NDPC). Approximately 300 miles of this 24"/30" pipeline, known as the Sandpiper project, would be located in Minnesota. The other project, the Line 3 replacement project, is a 1031-mile crude oil pipeline that runs from Hardisty, Alberta to Superior, Wisconsin proposed by Enbridge Energy, Limited Partnership (Enbridge). Approximately 337 miles of this 36" pipeline would be located in Minnesota.

The Environmental Quality Board's (EQB) Rule 4410.0500, subp. 1, provides that when a proposed project is subject to both a mandatory Environmental Assessment Worksheet (EAW) under Rule 4410.4300, and a mandatory Environmental Impact Statement (EIS) under 4410.4400, the RGU shall be the agency designated in Rule 4410.4400. The Sandpiper project is subject to both a mandatory EAW (Rule 4410.4300, subp. 7.A.) and a mandatory EIS (Rule 4410.4400, subp. 24), therefore, the Commission is the RGU as designated in Rule 4410.4400. The Commission is also the RGU for the Line 3 project will also be subject under these rule provisions.

The Commission is currently carrying out its role as the RGU for the Sandpiper EIS and for the Line 3 EIS as provided by the EQB's rules. In each case, the respective EIS will provide the environmental information necessary for the Commission to determine, pursuant to Minn. Stat. § 216B.243, whether a certificate of need should be granted to NDPC to build the Sandpiper project, and to Enbridge to build the Line 3 project. In the event a certificate of need is granted, the EIS will further guide the Commission's determination whether to grant the Sandpiper and Line 3 projects route permits pursuant to Minn. Stat. § 216G.02, specifying the design, routing, right-of-way preparation, facility construction and operation, and any other appropriate conditions deemed necessary.



The Commission recognizes that pursuant to Rule 4410.0500, subp. 6, the EQB can consider designating another agency as the RGU for the Sandpiper EIS and for the Line 3 EIS upon determining that the other agency has greater expertise in analyzing the potential impacts of the project. There is no other agency, including the Minnesota Pollution Control Agency (MPCA) and the Department of Natural Resources (DNR), that has greater experience and expertise in reviewing certificate of need and route permit applications for petroleum pipelines than the Commission.

The environmental review of pipelines required by MEPA has historically has been performed through an alternative EIS process created by EQB, in which EQB embedded MEPA's environmental review requirements into the Commission's rules governing pipeline permits. *See, e.g., In the Matter of Proposed Permanent Rules Relating to Pipeline Routing*, Statement of Need and Reasonableness (Sept. 30, 1988); *In the Matter of Approval of EQB Pipeline Routing Rules, Chapter 4415, as an Alternative Form of Environmental Review*, Findings of Fact, Conclusions, and Order of Approval (1988). The Commission has been responsible for deciding certificates of need since 1983, and has been implementing all environmental review for both the certificate of need and routing of pipelines since 2005. See Minn. R. Ch. 7852 and 7853; 1983 Minn. Law Ch. 289, § 115; 2005 Minn. Laws Ch. 97, art. 3, § 19.

A review of the Commission's pipeline certificate of need criteria under Minn. R. 7853.0130 and pipeline route permit criteria under Minn. R. 7852.1900, subp. 3, demonstrates that the Commission conducts an exhaustive examination of the potential impacts of a proposed pipeline. These criteria not only include consideration of the pipeline's impacts on human settlement, on the natural and socioeconomic environments, and possible mitigation of those impacts, but also consideration of (i) alternatives to construction of the pipeline that would meet the need for the pipeline; and (ii) the pipeline's compliance with other applicable policies, rules, and regulations of other state and federal agencies and local authorities regarding the location, design, construction, and operation of pipelines and associated facilities.

As recognized by the EQB's rules that designate the Commission as the RGU for the preparation of an EIS relating to large pipeline projects, the Commission is the agency with the experience and expertise necessary to prepare an EIS that will adequately address all the factors the Commission must consider under Minnesota law in making pipeline certificate of need and route permit determinations. Neither the MPCA nor the DNR have the same level of experience applying these pipeline criteria.

By way of illustration, attached is a list of the pipeline applications for which the Commission has conducted environmental review, as well as a list of other large energy projects for which the Department of Commerce has prepared an EIS that the Commission has determined to be adequate.

It also important to note that at its regular agenda meeting on March 24, 2016, the Commission denied a motion by the White Earth Band of Ojibwe requesting that the Commission relinquish its RGU role for the EIS on the Sandpiper and the Line 3 projects.

Accordingly, I believe the EQB should deny the March 10, 2016, Request for change in RGU Designation for Environmental Review of North Dakota Company LLC's proposed Sandpiper Pipeline Project and Enbridge Energy, Limited Partnership's proposed Line 3 Replacement Project.

Sincerely,

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission

John Linc Stine, Commissioner MPCA  
Tom Landwehr, Commissioner MNDNR  
Mike Rothman, Commissioner, Commerce  
Dave Fredrickson, EQB Chair

Pipeline applications; Commission responsible for the permitting and environmental review:

- February 2006 - Xcel Energy – High Bridge Natural Gas Pipeline Project – Natural Gas (PUC Docket GP-05-1706)
- July 2006 – CenterPoint Energy – Riverside Pipeline Project – Natural Gas (PUC Docket GP-06-426)
- October 2006 – Greater Minnesota Transmission, LLC – Cannon Falls Natural Gas Pipeline Project – Natural Gas (PUC Docket GP-06-931)
- April 2007 – Minnesota Pipeline Company – MinnCan Pipeline Project – Petroleum (PUC Docket PPL-05-2003)
- April 2008 – Nashwauk Public Utilities Commission – Blackberry Pipeline Project – Natural Gas (PUC Docket GP-06-1481)
- September 2008 – Minnesota Power – Boswell Pipeline – Natural Gas (PUC Docket GP-08-586)
- June 2009 – Enbridge – Alberta Clipper Southern Lights Pipeline Project – Petroleum/Diluent (PUC Docket PPL-07-361)
- May 2014 – Minnesota Power – Laskin Natural Gas Pipeline – Natural Gas (PUC Docket GP-13-978)
- August 2015 – Minnesota Pipeline Company – Minnesota Pipeline Reliability Project – Petroleum (PUC Docket CN-14-320)
- Pending – North Dakota Pipeline Company – Sandpiper Pipeline Project – Petroleum (PUC Docket PPL-13-474)
- Pending – Enbridge – Line 3 Pipeline Replacement Project – Petroleum (PUC Docket PPL-15-137)
- Pending – Minnesota Energy Resources Corporation – Rochester Natural Gas Pipeline Project – Natural Gas (PUC Docket GS-15-858)

Other projects where the EIS were prepared by Department of Commerce; and determined adequate by the Commission:

- Split Rock to Lakefield Junction 345 kV Transmission Line EIS, March 2005 (EQB Docket 03-73-TR-XCEL)
- Monticello Dry Cask Storage EIS, March 2006 (PUC Docket CN-05-123)
- Big Stone Transmission Line Project EIS, December 2006 (PUC Docket TR-05-1275)
- Prairie Island Power Uprate EIS, July 2009 (PUC Docket GS-08-509, 510, 690)
- Noble Flat Hill 230 kV Transmission Line EIS, October 2009, (PUC Docket TL-08-988)
- Mesaba Energy Project EIS, November 2009 (PUC Docket GS-06-668)
- CapX2020 Brookings to Hampton Transmission Line EIS, January 2010 (PUC Docket TL-08-1474)
- Monticello to St. Cloud 345 kV Transmission Line EIS, March 2010 (PUC Docket TL-09-246)
- Essar Steel Transmission Line EIS, May 2010 (PUC Docket TL-09-512)
- Hiawatha Transmission Line Project, June 2010 (PUC Docket TL-09-38)
- Bemidji to Grand Rapids 230 kV Transmission Line EIS, September 2010 (PUC Docket TL-07-1327)
- Fargo to St. Cloud 345 kV Transmission EIS, July 2011 (PUC Docket TL-09-1056)

- Hampton to Rochester to La Crosse 345 kV Transmission Line EIS, August 2011 (PUC Docket TL-09-1448)
- ITC Midwest Minnesota to Iowa 345 kV Transmission Line EIS, July 2014 (PUC Docket TL-12-1337)
- Minnesota Power Great Northern Transmission Line EIS, October 2015 (PUC Docket TL-14-21)



85 7TH PLACE EAST, SUITE 500  
SAINT PAUL, MINNESOTA 55101-2198  
MN.GOV/COMMERCE  
651.539.1500 FAX: 651.539.1547  
AN EQUAL OPPORTUNITY EMPLOYER

March 25, 2016

Will Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
Saint Paul, MN 55155

Re: Response to Letter of March 16, 2016, Regarding Request for a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC's Proposed Sandpiper and Line 3 Replacement Pipeline Projects

Dear Mr. Seuffert:

I am writing in response to your March 16, 2016 letter to the Department of Commerce (Commerce) with questions related to a citizen request for a different responsible governmental unit (RGU) for the environmental review of the proposed Sandpiper and Line 3 Replacement Pipelines (Pipeline Projects). The letter stated that the citizen requested that the Environmental Quality Board (EQB) relieve the Minnesota Public Utilities Commission (Commission) of its current RGU designation for the projects and replace it with a joint RGU between the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR). You requested our response by Friday, March 25, to assist you in preparing a staff recommendation for the EQB's consideration at its meeting on April 20, 2016.

As you know, the Commission has been designated by the EQB as the RGU for pipelines,<sup>1</sup> and the Commission has been responsible for the overall approval and supervision of the Pipeline Projects for quite some time. Under the existing framework, the Commission must determine whether to grant a Certificate of Need (CN) and to issue a Route Permit. In the CN process, the Commission determines whether the project is needed based on an evaluation of various criteria.<sup>2</sup> This criteria requires the Commission to consider whether the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states; a more reasonable and prudent alternative to the

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<sup>1</sup> See Minn. R. 4410.4400, subp. 24. By its own terms, the rule cited in your letter regarding RGU selection generally, Minn. R. 4410.0500, subp. 5., would not appear to be applicable in this case.

<sup>2</sup> See Minn. R. 7853.0130.

proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant; the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and, whether it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.<sup>3</sup>

If the Commission decides to grant a CN, it must then issue a Route Permit. The Pipeline Projects cannot be constructed without a Route Permit issued by the Commission.<sup>4</sup> “In determining the route of a proposed pipeline, the commission shall consider the characteristics, the potential impacts, and methods to minimize or mitigate the potential impacts of all proposed routes so that it may select a route that minimizes human and environmental impact.”<sup>5</sup> In determining the route, the Commission is required to consider the following criteria:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features;
- H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;
- I. cumulative potential effects of related or anticipated future pipeline construction; and,
- J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.<sup>6</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> See Minn. Stat. § 216G.02, subd. 2.

<sup>5</sup> Minn. R. 7852.1900, subp. 2.

<sup>6</sup> Minn. R. 7852.1900, subp. 3.

March 25, 2016  
Page 3 of 3

In making its determinations, the Commission is required to consider all of the impacts of a project – environmental, societal, and economic. The Commission is the only entity that has conducted this analysis for a pipeline. And its analysis has been assisted by Commerce, the only entity that has prepared an environmental review for a pipeline in Minnesota.

The Commission also has the authority and responsibility to modify or suspend a permit if it determines that substantial evidence supports a finding that a violation of the terms or conditions of a Route Permit has occurred or is likely to occur.<sup>7</sup> Finally, the Commission is required to determine whether the permitted pipeline construction has been completed in compliance with all permit conditions or if deficiencies must be corrected after a permittee files its completion certification.<sup>8</sup>

Commerce's role regarding pipelines has been to provide the services or information requested by the Commission, including, but not limited to, CN information and environmental review, so that the Commission can fulfill its responsibilities. By Commission order, it authorized Commerce to be responsible for the preparation of the EISs and to enter into an agreement with the PCA and DNR to assist to ensure that the EISs would meet all of the requirements of the Minnesota Environmental Policy Act (MEPA). Commerce, PCA and DNR have formalized their collaboration under a Memorandum of Understanding (MOU), a copy of which is attached for reference. Under this arrangement, the expertise of the Commission and all three agencies will be utilized in analyzing the potential impacts of the proposed projects and ensuring that the requirements of MEPA are met.

Moreover, in addition to environmental reviews for pipelines, Commerce has done 13 EISs for power plant and transmission lines since 2009. And the Commerce Division of Energy Resources' Energy Environmental Review and Analysis team that is responsible for preparing the EISs is the same section that provided technical assistance to the EQB before it was transferred to Commerce in 2005.

Commerce thus recommends that the RGU for the Pipeline Projects remain with the Commission as provided by the EQB's rules.<sup>9</sup>

Sincerely,



Mike Rothman  
*Commerce Commissioner*

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<sup>7</sup> See Minn. R. 7852.3800, subp. 2.

<sup>8</sup> See Minn. R. 7852.3900.

<sup>9</sup> See Minn. R. 4410.4400, subp. 24.

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE MINNESOTA DEPARTMENT OF COMMERCE**  
**AND**  
**THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES AND THE**  
**MINNESOTA POLLUTION CONTROL AGENCY**  
**REGARDING**  
**DEVELOPMENT OF ENVIRONMENTAL IMPACT STATEMENTS**  
**FOR THE**  
**SANDPIPER AND LINE 3 REPLACEMENT PIPELINE PROJECTS**

This Memorandum of Understanding (MOU) between the Minnesota Department of Commerce (Commerce or Lead Agency) and the Minnesota Department of Natural Resources (MnDNR) and Minnesota Pollution Control Agency (MPCA) (collectively referred to as the Agencies) defines the roles and responsibilities of Commerce, the MnDNR and MPCA (Assisting Agencies) regarding the development of the necessary environmental review documents, including Environmental Impact Statements (EISs), for the proposed Sandpiper and Line 3 Replacement pipeline projects (Proposed Projects).

**I. COMMISSION RESPONSIBILITIES**

The Minnesota Public Utilities Commission (Commission) is the Responsible Governmental Unit (RGU) for the environmental review of the Proposed Projects. In that capacity, the Commission will make all final decisions regarding the scope and adequacy of the EISs for both of the Proposed Projects.

**II. COMMERCE SCOPE OF WORK AND RESPONSIBILITIES**

Pursuant to the Commission's January 11, 2016 Order, Commerce shall serve as Lead Agency for the development of the relevant environmental review documents for both of the Proposed Projects and administer the development of the Sandpiper EIS and the Line 3 EIS pursuant to the requirements set forth in the Minnesota Environmental Policy Act (MEPA), Minn. Stat. Ch. 116D, and Minnesota Rules Ch. 4410.

**III. MnDNR AND MPCA SCOPE OF WORK AND RESPONSIBILITIES**

The MnDNR and MPCA, as Assisting Agencies, shall assist the Lead Agency in identifying issues, alternatives, routes and alternative route proposals, data, and analysis to address environmental review topics and requirements and help Commerce ensure that each EIS fulfills applicable MEPA requirements; review, assess and comment on data and analysis in environmental documents prepared during the environment review process; address any potential deficiencies in environmental review documents in a timely manner to allow the deficiencies to be addressed as early as possible in the environmental review process; review and provide comments on



environmental review documents prepared for either of the Proposed Projects; and provide such other assistance as the Lead Agency and the Assisting Agencies mutually agree are necessary for MEPA compliance.

#### IV. AGENCY RESOURCES

1. The Assisting Agencies agree to use best efforts to provide the staffing resources necessary to accomplish the purpose of this MOU. Specific staffing needs to accomplish the purpose of this MOU will be identified in a separate interagency funding agreement that designates the specific Assisting Agency staff assigned, their general scope of duties, and maximum total funding to be provided.

2. It is understood by the Lead Agency and the Assisting Agencies that the Lead Agency will enter into a separate arrangement with the Project Proposer(s) to cover the cost of environmental review for both Proposed Projects pursuant to Minn. Stat. § 116D.045 and Minn. R. 4410.6000 through 4410.6500. Costs assessed to the Project Proposer(s) shall include the costs necessary to reimburse the Assisting Agencies for all costs incurred by the Assisting Agencies in accomplishing the purpose of this MOU.

3. All obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources for the work undertaken by the Agencies to accomplish the MOU's purpose and allocation of responsibilities.

#### V. GENERAL PROVISIONS

1. Agency Designees: The Agencies agree to designate personnel as the Agency designee with primary responsibility for implementing the terms of this agreement.

The Agencies' designees are, hereby, authorized to develop procedures and agreed timelines necessary to accomplish the purpose of this MOU.

2. Data Practices. The Lead Agency and Assisting Agencies agree to coordinate compliance with the requirements of the Minnesota Government Data Practices Act (MGDPA) as it pertains to the data collected or used to accomplish the purpose of this MOU.

3. Amendments. This MOU may be amended only by written agreement of all parties.

4. Termination. This MOU will remain in effect until issuance of the Commission's determination of EIS adequacy for both of the Proposed Projects. Notwithstanding the forgoing, any party may withdraw from this MOU upon written notice to the other signatories to this MOU.

5. Liability. Each party to this MOU shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Nothing in this MOU shall be deemed to be a waiver by any of the parties of any applicable state immunities or limits of liability.

6. Effective Date. This MOU will be effective upon execution by all parties hereto.

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE AUTHORITY TO COMMIT TO THIS MOU ON BEHALF OF THE PARTY THAT THEY REPRESENT.

**Minnesota Department of Commerce**

By: 

Print Title/Name: Deputy Commissioner, William Grant

Date: 3-2-16

**Minnesota Pollution Control Agency**

By: 

Print Title/Name: Deputy Commissioner / Michelle Beeman

Date: 3/2/16

**Minnesota Department of Natural Resources**

By: 

Print Title/Name: Assistant Commissioner Barbara L. Naramore

Date: 3/2/16



March 25, 2016

William Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road  
Saint Paul, MN 55155

RE: Response to Request for a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC's Proposed Sandpiper Pipeline and Line 3 Replacement Pipeline Projects

Dear Director Seuffert:

On March 16, 2016, you shared with us a citizen request regarding the responsible governmental unit (RGU) designation for the environmental review of the North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Line 3 Replacement Pipeline Projects. As you summarized, the citizen is asking the Environmental Quality Board (EQB) to take the RGU designation for the projects from the Minnesota Public Utilities Commission (PUC) and assign it in a joint capacity to the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR). You requested that our agencies provide you with a response by Friday, March 25, that will assist you in preparing a staff recommendation for the EQB's consideration at its meeting on April 20, 2016.

As you summarize in your letter, the EQB has jurisdiction over RGU selection, and that selection process is outlined in Minnesota Rules 4410.0500. Subpart 5 further defines applicable considerations in determining the appropriate RGU for these projects. In the case of any pipeline proposal, there are numerous issues that are relevant and important in preparing a complete environmental review. By virtue of their breadth, these issues do not all fall within the regulatory purview or expertise of a single state agency. Indeed, some require the expertise of multiple agencies. Because of this, our two agencies have voluntarily entered into an agreement with the Department of Commerce (Commerce) to assist in the evaluation of North Dakota Pipeline Company's two proposed pipeline projects. Our interagency agreement is articulated in a joint Memorandum of Understanding (MOU) that was filed with the PUC on March 3, 2016 (enclosed). In the MOU, the three agencies collectively commit to working together to prepare the EIS documents, each of us providing our particular expertise and regulatory insights to the process. We believe this cooperative effort is fully in keeping with Minnesota Rules 4410.0500 and is, in fact, the best means of ensuring the EISs rigorously, thoroughly, and efficiently analyze the potential impacts of the two proposed projects. This approach will best serve the interests of all concerned, including citizens, the project proposer, and the entities with approval or regulatory authority.

As to the specific questions posed in your letter, the MPCA and the DNR have limited overall regulatory authority over these projects. As you know, the PUC has the primary approval authority for an entire pipeline project, including routing decisions, while the MPCA and DNR have authority to regulate specific activities in connection with pipeline construction and operation. MPCA's and DNR's authorities include various permits and licenses for construction stormwater, public water and public land crossings, air emissions, water discharges, endangered species protection, water appropriations, and minerals encumbrances. However, neither the MPCA nor the DNR has such a singular regulatory role to play that it warrants removing the RGU status from the PUC. The PUC's current approach, in which it delegated the preparation of the EIS to Commerce with the explicit condition of involving the MPCA and DNR, accomplishes the goal of bringing the full range of state expertise to the analysis. There is no one single agency that has demonstrably greater expertise than Commerce in analyzing the potential impacts of the project in its entirety. Rather, each of our three agencies has specific expertise around certain categories of potential impacts. Minnesota Rules 4410.2200 provide a means by which an RGU can gain access to other governmental units that have relevant areas of expertise for a specific review. The approach reflected in our MOU is consistent with this rule and will ensure that the environmental review process fully engages the expertise and regulatory perspectives of all three agencies. Since the relevant authorities are dispersed among the agencies, the MOU is the most effective way to leverage our collective expertise, and we see no advantage to, or basis for, changing the RGU designation.

We have directed the staff in both our agencies to work together with the staff in Commerce to ensure we bring all appropriate expertise to bear as we collectively scope and conduct the environmental review processes. We are currently finalizing our staffing plans and the necessary fiscal arrangements under which North Dakota Pipeline Company will be paying the state's expenses in conducting the environmental reviews.

Our recommendation is that the EQB deny the request to change the RGU designation. If you have additional questions, please contact us.

Sincerely,

  
John Linc Stine  
MPCA Commissioner

  
Tom Landwehr  
MDNR Commissioner

c: Dave Frederickson, EQB Chair

March 3, 2016

Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101

RE: Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474

Dear Mr. Wolf:

Pursuant to the Commission's January 16, 2016 Order in the above-referenced dockets, the Department of Commerce, Pollution Control Agency and Department of Natural Resources submit the attached Memorandum of Understanding regarding development of Environmental Impact Statements for the proposed Sandpiper and Line 3 Replacement pipeline projects, dated March 2, 2016.

Sincerely,



William Grant  
Deputy Commissioner

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**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE MINNESOTA DEPARTMENT OF COMMERCE**

**AND**

**THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES AND THE  
MINNESOTA POLLUTION CONTROL AGENCY**

**REGARDING**

**DEVELOPMENT OF ENVIRONMENTAL IMPACT STATEMENTS  
FOR THE**

**SANDPIPER AND LINE 3 REPLACEMENT PIPELINE PROJECTS**

This Memorandum of Understanding (MOU) between the Minnesota Department of Commerce (Commerce or Lead Agency) and the Minnesota Department of Natural Resources (MnDNR) and Minnesota Pollution Control Agency (MPCA) (collectively referred to as the Agencies) defines the roles and responsibilities of Commerce, the MnDNR and MPCA (Assisting Agencies) regarding the development of the necessary environmental review documents, including Environmental Impact Statements (EISs), for the proposed Sandpiper and Line 3 Replacement pipeline projects (Proposed Projects).

**I. COMMISSION RESPONSIBILITIES**

The Minnesota Public Utilities Commission (Commission) is the Responsible Governmental Unit (RGU) for the environmental review of the Proposed Projects. In that capacity, the Commission will make all final decisions regarding the scope and adequacy of the EISs for both of the Proposed Projects.

**II. COMMERCE SCOPE OF WORK AND RESPONSIBILITIES**

Pursuant to the Commission's January 11, 2016 Order, Commerce shall serve as Lead Agency for the development of the relevant environmental review documents for both of the Proposed Projects and administer the development of the Sandpiper EIS and the Line 3 EIS pursuant to the requirements set forth in the Minnesota Environmental Policy Act (MEPA), Minn. Stat. Ch. 116D, and Minnesota Rules Ch. 4410.

**III. MnDNR AND MPCA SCOPE OF WORK AND RESPONSIBILITIES**

The MnDNR and MPCA, as Assisting Agencies, shall assist the Lead Agency in identifying issues, alternatives, routes and alternative route proposals, data, and analysis to address environmental review topics and requirements and help Commerce ensure that each EIS fulfills applicable MEPA requirements; review, assess and comment on data and analysis in environmental documents prepared during the environment review process; address any potential deficiencies in environmental review documents in a timely manner to allow the deficiencies to be addressed as early as possible in the environmental review process; review and provide comments on

environmental review documents prepared for either of the Proposed Projects; and provide such other assistance as the Lead Agency and the Assisting Agencies mutually agree are necessary for MEPA compliance.

#### IV. AGENCY RESOURCES

1. The Assisting Agencies agree to use best efforts to provide the staffing resources necessary to accomplish the purpose of this MOU. Specific staffing needs to accomplish the purpose of this MOU will be identified in a separate interagency funding agreement that designates the specific Assisting Agency staff assigned, their general scope of duties, and maximum total funding to be provided.

2. It is understood by the Lead Agency and the Assisting Agencies that the Lead Agency will enter into a separate arrangement with the Project Proposer(s) to cover the cost of environmental review for both Proposed Projects pursuant to Minn. Stat. § 116D.045 and Minn. R. 4410.6000 through 4410.6500. Costs assessed to the Project Proposer(s) shall include the costs necessary to reimburse the Assisting Agencies for all costs incurred by the Assisting Agencies in accomplishing the purpose of this MOU.

3. All obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources for the work undertaken by the Agencies to accomplish the MOU's purpose and allocation of responsibilities.

#### V. GENERAL PROVISIONS

1. Agency Designees: The Agencies agree to designate personnel as the Agency designee with primary responsibility for implementing the terms of this agreement.

The Agencies' designees are, hereby, authorized to develop procedures and agreed timelines necessary to accomplish the purpose of this MOU.

2. Data Practices. The Lead Agency and Assisting Agencies agree to coordinate compliance with the requirements of the Minnesota Government Data Practices Act (MGDPA) as it pertains to the data collected or used to accomplish the purpose of this MOU.

3. Amendments. This MOU may be amended only by written agreement of all parties.

4. Termination. This MOU will remain in effect until issuance of the Commission's determination of EIS adequacy for both of the Proposed Projects. Notwithstanding the forgoing, any party may withdraw from this MOU upon written notice to the other signatories to this MOU.

5. Liability. Each party to this MOU shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Nothing in this MOU shall be deemed to be a waiver by any of the parties of any applicable state immunities or limits of liability.



6. Effective Date. This MOU will be effective upon execution by all parties hereto.

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE AUTHORITY TO COMMIT TO THIS MOU ON BEHALF OF THE PARTY THAT THEY REPRESENT.

**Minnesota Department of Commerce**

By: 

Print Title/Name: Deputy Commissioner, William Grant

Date: 3-2-16

**Minnesota Pollution Control Agency**

By: 

Print Title/Name: Deputy Commissioner/Michelle Beeman

Date: 3/2/16

**Minnesota Department of Natural Resources**

By: 

Print Title/Name: Assistant Commissioner Barbara L. Naramore

Date: 3/2/16



Enbridge Energy, Limited  
Partnership  
26 East Superior Street,  
office 408G  
Duluth, MN 55802

March 25, 2016

**VIA EMAIL**

William Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Re: Request for a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC's Proposed Sandpiper Pipeline and Line 3 Replacement Pipeline Projects

Dear Mr. Seuffert:

I write in response to your March 16, 2016 correspondence, in which you ask North Dakota Pipeline Company LLC and Enbridge Energy, Limited Partnership (together, the "Project Proposers") to respond to several questions related to Mr. Willis Mattison's March 10, 2016 request to change the responsible government unit ("RGU") for environmental review of the Sandpiper Pipeline Project and Line 3 Replacement Project (together, the "Projects") from the Minnesota Public Utilities Commission ("Commission") to the Minnesota Department of Natural Resources ("DNR") and Minnesota Pollution Control Agency ("PCA"). Responses to the specific questions raised in your letter are below. As you will see, it is the Project Proposers' position that the Commission should remain the RGU for the Projects because the Commission is the only agency authorized by statute or rule with permitting the Projects as a whole and has greater expertise in environmental review of large linear infrastructure projects.

**1. Minnesota Rule 4410.0500, Subpart 5.**

- a. Which agency, the Commission, the PCA, or the DNR, has the greatest responsibility for supervising or approving the above-entitled projects?*

The Commission has the greatest responsibility for supervising and approving the Projects. Specifically, the Commission has sole authority to determine the need for and routing of the Projects.<sup>1</sup> Under these statutes and rules, the Commission is tasked with evaluating a full

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<sup>1</sup> See Minn. Stat. § 216B.243; Minn. Stat. Ch. 216G; Minn. R. Ch. 7852, 7853.

March 25, 2016

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and broad spectrum of potential effects.<sup>2</sup> To consider the environmental effects, the Commission works with the Department of Commerce (“Department”) to conduct its environmental review.<sup>3</sup>

By contrast, DNR and PCA have important, yet more limited, resource-specific roles. For example, DNR may issue licenses to cross state lands, and PCA may issue any needed air emissions or water appropriation permits for the Projects. However, these agencies do not have authority over the Projects as a whole. Nor are they charged with reviewing the socioeconomic analysis required by the Commission’s rules.

*b. Is the supervision and/or approval for the project as a whole?*

Yes. The Commission has exclusive authority over determining need and routing for the Projects.<sup>4</sup> In addition, the federal Department of Transportation, Pipeline Hazardous Materials Administration (“PHMSA”) has exclusive jurisdiction over pipeline safety. In Minnesota, PHMSA carries out this authority through the Minnesota Office of Pipeline Safety (“MnOPS”).

*c. Please provide any additional information relevant to Minnesota Rule 4410.0500, Subp. 5.*

As noted above, the Commission has sole authority for approving the Projects as a whole. However, recognizing that DNR and PCA have resource-specific expertise, the Commission has directed the Department to enter into a memorandum of understanding (“MOU”) with DNR and PCA for the Projects’ environmental review. The Department, DNR, and PCA have now executed an MOU, which provides, in part, that DNR and PCA will assist the Department:

in identifying issues, alternatives, routes and alternative route proposals, data, and analysis to address applicable MEPA requirements; review, assess and comment on data and analysis in environmental documents prepared during the environment review

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<sup>2</sup> *Id.*

<sup>3</sup> The rules contemplate that the Commission, as the RGU, may use an agent, such as the Department, to complete environmental review. *See* Minn. R. 4410.1400; <http://mn.gov/commerce/industries/energy/> (stating that the Department “provides objective analysis and technical assistance to the Minnesota Public Utilities Commission” and “conduct[s] the environmental review required for large energy projects in Minnesota, and provide[s] technical expertise and assistance to the Commission regarding the siting and routing of large energy projects.”); *see also* <https://mn.gov/puc/resources/energyfacilities.jsp> (stating that the Department “conducts an environmental review, provides technical expertise and submits recommendations to the Commission after analysis of siting and routing applications”).

<sup>4</sup> *See* Minn. Stat. § 216B.243; Minn. Stat. Ch. 216G; Minn. R. Ch. 7852, 7853.

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process; address any potential deficiencies in environmental review documents in a timely manner to allow the deficiencies to be addressed as early as possible in the environmental review process; review and provide comments on environmental review documents prepared for either of the Proposed Projects; and provide such other assistance as the [Department and MDNR and MPCA] mutually agree are necessary for MEPA compliance.

As a result of the MOU, the environmental review for the Projects will benefit from not only the oversight of the Commission (which is the only agency tasked with permitting the Projects as a whole), but also the resource-specific expertise of DNR and PCA.

Further, as the EQB may know, the Projects have already been the subject of numerous delays, despite a regulatory process that is supposed to be completed within one year.<sup>5</sup> The request at issue here appears to be another attempt to delay critical infrastructure projects in Minnesota and add additional procedural irregularities (*i.e.*, adding a new RGU) into these proceedings. Delay and procedural irregularities create uncertainties for the Project Proposers, the public, and others considering whether to invest in important infrastructure projects in Minnesota.

## **2. Minnesota Rule 4410.0500, Subpart 6.**

- a. Which agency, the Commission, the PCA, or the DNR, has greater expertise in analyzing the potential impacts of the proposed projects?*

The Commission and the Department have greater expertise in pipeline permitting and the related environmental review.<sup>6</sup> The applicable statutes and rules for both need and routing require the Commission to consider a broad range of issues, including environmental issues, when determining whether to grant pipeline permits and whether any conditions should be attached to those permits.<sup>7</sup> In addition, the Commission and the Department regularly conduct permitting and related environmental review for other large infrastructure projects, such as

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<sup>5</sup> Minn. Stat. § 216B.243, subd. 5; Minn. R. 7853.0200, subp. 6; Minn. Stat. § 216G.02, subd. 3(5); Minn. R. 7852.0800.

<sup>6</sup> *E.g.*, *In the Matters of the Applications of Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need and Pipeline Routing Permit for the LSr Project*, MPUC Docket Nos. PL9/CN-07-464 and PPL-07-360; *In the Matters of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and Pipeline Routing Permit for the Alberta Clipper Pipeline Project*, MPUC Docket Nos. PL-9/CN-07-465 and PPL-07-361.

<sup>7</sup> *See* Minn. Stat. § 216B.243; Minn. Stat. Ch. 216G; Minn. R. Ch. 7852, 7853.

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transmission lines, wind farms, solar farms, and power plants.<sup>8</sup> Notably, the Commission has conducted numerous EISs for transmission lines.<sup>9</sup> Although these EISs proceed under Minn. R. Ch. 7850, rather than Minn. R. Ch. 4410, the process and content is very much similar. Notably, transmission and pipeline projects are both linear in nature and can span hundreds of miles and cross state and international borders. By contrast, neither DNR nor PCA have conducted any project-wide environmental review for pipelines or other linear infrastructure projects. Accordingly, the Commission has greater expertise in analyzing the Projects' potential impacts.

*b. Please provide any additional information relevant to Minnesota Rule 4410.0500, Subp. 6.*

As noted above, the Department, DNR, and PCA have already entered into an MOU for the Projects' environmental review, thereby taking advantage of the Commission and the Department's expertise in pipeline and linear infrastructure permitting and environmental review, as well as the resource-specific expertise of DNR and PCA.

### **3. Recommendation.**

The Commission has permitting authority over the Projects and greater expertise in analyzing the full spectrum of potential impacts of linear infrastructure like the Projects. Accordingly, the Project Proposers respectfully recommend and request that the Commission remain the RGU for the Projects.

Thank you for the opportunity to respond. Please contact me if you have any further questions.

Sincerely,

*/s/ John Swanson*

John Swanson  
Vice President – US Major Onshore Projects

58342092

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<sup>8</sup> See Minn. R. Ch. 7849, 7850, 7851, 7854, and 7855.

<sup>9</sup> See Minn. R. 7850.2500.



## Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

26 East Exchange Street - Suite 206  
Saint Paul, MN 55101-1667

651.223.5969  
651.223.5967 fax

info@mncenter.org  
www.mncenter.org

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Carol Tomer

**Executive Director**  
Scott Strand

March 23, 2016

Will Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55101

Dear Mr. Seuffert,

I write on behalf of Friends of the Headwaters and the Minnesota Center for Environmental Advocacy in regards to the request before the Environmental Quality Board (EQB) from Mr. Willis Mattison. As you know, Mr. Mattison has requested that the EQB exercise its authority to change the Responsible Governmental Unit (RGU) for the environmental review process for the proposed Sandpiper and Line 3 pipelines.

FOH and MCEA are concerned about the lack of public involvement and transparency in this process. We understand that this matter has been scheduled to be discussed at an EQB meeting in April. However, there has been no public notice or public comment period, and the only entities that have been notified about this meeting are the agencies involved, and Enbridge. This is unacceptable for a project that has a state-wide impact and has garnered state-wide interest.

We ask that you hold a public comment period of at least 30 days to solicit input on the question of the appropriate RGU for the Sandpiper and Line 3 Environmental Impact Statement. We ask that the comment period be held prior to a meeting of the EQB discussing the petition to change the RGU. While FOH and MCEA remain neutral at this time on the question of whether the Department of Commerce should be removed as RGU, we do have significant concerns about Commerce's work so far. Those concerns are summarized in a motion that we recently filed with the Public Utilities Commission, which I have attached for your reference. The motion asks for, among other things, the appointment of an independent expert panel to assist with the EIS, particularly in areas where Commerce lacks experience and expertise.

In the spirit of transparency and good governance, the EQB should not make a decision about the appropriate RGU based only on input from the agencies in question and Enbridge. Open comment periods for the proposed pipelines have regularly brought in hundreds of public comments, and both the Sandpiper and Line 3 dockets now have many intervenors on both sides, including tribes and a tribal organization. There is no doubt that these pipelines and the EIS process are part of a state-wide conversation. The public and the intervening parties deserve the opportunity to weigh in on this question, and the EQB cannot be fully informed about its decision without input from tribes and citizens.

Thank you for your consideration. Please do not hesitate to contact me with questions.

Best Regards,

A handwritten signature in black ink that reads "Kathryn M Hoffman". The signature is written in a cursive, flowing style.

Kathryn M. Hoffman  
Interim Legal Director  
Minnesota Center for Environmental Advocacy  
26 East Exchange Street, Suite 206  
St. Paul, MN 55101  
Phone: (651) 223-5969  
khoffman@mncenter.org

*Attorney for Friends of the Headwaters*



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Mathias Samuel

Jaclyn Schroeder

Andrew Steiner

Paige Stradley

Carol Tomer

Executive Director  
Scott Strand

March 9, 2016

Dan Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101

**VIA ELECTRONIC SERVICE**

Re: *In the Matters of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border and of the Applications of North Dakota Pipeline Company LLC for a Certificate of Need and Pipeline Routing Permit for the Sandpiper Pipeline Project.*

*MPUC Docket Nos. PL-9/CN-14-916; PL-9/PPL-15-137  
PL-6668/CN-13-473; PL-6668/PPL-13-474  
OAH Docket Nos. 65-2500-32764  
8-2500-31260; 8-2500-31259*

Dear Mr. Wolf,

In connection to the above-captioned dockets please find the enclosed Motion To Order The Department Of Commerce To Renegotiate The Memorandum Of Understanding And To Establish An Expert Advisory Council Under Minn. Stat. § 116D.03, filed on behalf of Friends of the Headwaters. Also attached is an Affidavit of Service.

Sincerely,

/s/ Kathryn M. Hoffman  
Kathryn M. Hoffman  
Staff Attorney

KMH/em

Enclosure

cc: Service List



STATE OF MINNESOTA  
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

In the Matters of the Applications of North Dakota Pipeline Company LLC for a Certificate of Need and Pipeline Routing Permit for the Sandpiper Pipeline Project

MPUC Docket Nos. PL-6668/CN-13-473  
PL-6668/PPL-13-474  
OAH Docket Nos. 8-2500-31260  
8-2500-31259

In the Matters of Enbridge, Limited Partnership, for a Certificate of Need and Pipeline Routing Permit for the Line 3 Replacement Project

PUC Docket Nos. PL-9/PPL-15-137  
PL-9/CN-14-916  
OAH Docket No. 65-2500-32764

**MOTION TO ORDER THE DEPARTMENT OF COMMERCE TO RENEGOTIATE THE MEMORANDUM OF UNDERSTANDING, AND TO ESTABLISH AN EXPERT ADVISORY COUNCIL UNDER MINN. STAT. § 116D.03**

Pursuant to Minn. R. 1400.6600 and Minn. Stat. § 116D.03, subd. 2, the Friends of the Headwaters (“FOH”) hereby moves that the Commission: 1) order the Department of Commerce to Renegotiate the Memorandum of Understanding to ensure non-discretionary involvement of the assisting agencies, and 2) order the formation of an Expert Advisory Council to assist in properly scoping the Environmental Impact Statement (“EIS”) in this case and to ensure compliance with applicable state laws and regulations concerning environmental review.

**INTRODUCTION**

FOH is gravely concerned that the preparation of the Sandpiper EIS is proceeding contrary to well-established law and procedure. Divergence between the legal requirements of environmental review and the development of the EIS, especially at this early stage, will almost certainly result in reversal on appeal, an outcome that will only lengthen the delays with which North Dakota Pipeline Company LLC (“NDPC”) and its supporters are so concerned. The recently-filed Memorandum of Understanding (“MOU”) does not alleviate these concerns; if anything, the MOU heightens these concerns, as it provides for the *possibility* of assistance from other agencies, but it does not *require* it. Any assistance is contingent on the availability of funding and staff, neither of which are presumed to exist. To prevent any further delays, FOH

requests that the Commission order the Department to renegotiate the MOU to ensure non-discretionary involvement of DNR and PCA through specified minimum commitments of funding and staff time. FOH also requests that the Commission establish an Advisory Council under § 116D.03, subd. 2(2) to assist the Department of Commerce (“the Department”) in the scoping process and to generally advise the Department on two areas of expertise: (1) MEPA compliance and implementation and (2) the environmental impacts of pipelines to be evaluated.

Recent comments from the Department suggesting that “the discretion to set schedules for contested cases, including schedules for dates of prefiled testimony, is within the ALJ’s purview,”<sup>1</sup> demonstrate a poor understanding of EIS procedure. Most importantly, these comments illustrate a faulty understanding of the Responsible Governmental Unit’s (“RGU”) legal responsibilities in EIS preparation. Perhaps this is understandable, given the novel circumstances in which the Department finds itself. Preparing an EIS is a highly specialized, technical, and difficult endeavor for any agency, but especially so for an agency unfamiliar with the process. To make the matter even more difficult, this EIS concerns two massive pipelines traversing 300 miles of sensitive Minnesota landscape and affecting 14,000-15,000 acres. It also incorporates the environmental impact of the Line 3 Replacement Project, which proposes to carry diluted bitumen across Minnesota wetlands.<sup>2</sup> A recent National Academies of Science report emphasized the uniquely challenging aspects of the environmental impact of diluted bitumen spills, which highlights the need for additional expertise as part of the EIS.<sup>3</sup> Such an EIS is much more complicated than a single-site project such as Polymet’s NorthMet proposal. Without guidance from experts well-versed in the preparation of EISs, this complexity and lack of experience greatly increases the risk that the EIS will be found inadequate upon judicial review, further delaying these proceedings.

FOH is further concerned that the Department’s role in the preparation of the EIS will be highly influenced by the privileged position of NDPC, the applicant in this case. Their reliance on NDPC for advice on EIS implementation is troubling, as recent statements from NDPC have also indicated a fundamental misunderstanding of how environmental review works under state law.

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<sup>1</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *Comments Of The Minnesota Department Of Commerce*, February 12, 2016, at page 2.

<sup>2</sup> See Docket Nos. PL-9/CN-14-916; PL-9/PPL-15-137, *Order Joining Need And Routing Dockets*, February 1, 2016, at page 10 (“The Commission authorizes a combined environmental review that considers the cumulative impact of the Sandpiper Pipeline Project and the Line 3 Project.”).

<sup>3</sup> National Academies of Sciences, Engineering, and Medicine. 2016. *Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response*. Washington, DC: The National Academies Press (“[D]iluted bitumen spills in the environment pose particular challenges when they reach water bodies. Progressive evaporative loss of the diluent leaves behind the relatively dense and viscous bitumen, which can then become submerged, perhaps first by adhering to particles, and ultimately sink to the sediments.”).

The Commission's reliance on the Department's Comments in this matter (and by implication, on the comments of NDPC) will almost certainly result in procedural delays to allow for the Court of Appeals to provide guidance on proper EIS implementation. In order to prevent such delays from occurring, FOH urges the Commission to create an Expert Advisory Council as authorized by Minn. Stat. § 116D.03, subd. 2(2), which states that each state department and agency shall "utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible." An expert advisory council could be the difference between a legally inadequate EIS and a thorough analysis that can assist both the public and decision-makers. FOH also urges the Commission to order the renegotiation of the MOU to provide for non-discretionary assistance from DNR and MPCA.

### **FACTS AND PROCEDURAL BACKGROUND**

After meeting in December 2015 to consider how to proceed in light of the Minnesota Court of Appeals decision in this case, the Commission on January 11, 2016 lifted the stay on the Certificate of Need docket, joined the need docket with the routing docket, and referred the matter to OAH for contested case proceedings.<sup>4</sup> The order also "authorize[d] the preparation of a combined EIS that addresses issues related to the certificate of need and route permit dockets" and ordered that the final EIS "shall be issued prior to the filing of intervenor direct testimony."<sup>5</sup> The Commission found that issuance of the final EIS prior to direct testimony would "best reconcile the contested case process with the MEPA process, and [] avoid delay related to use of the EIS document in that process."<sup>6</sup>

On February 1, 2016, multiple parties petitioned the Commission to reconsider that order, all making substantially identical arguments that that Commission should require issuance of the draft EIS prior to the direct testimony, not the final EIS. Also on February 1, 2016, the Department of Commerce filed a "request for clarification" in which it asked whether the Commission "intended the Department to include some or all of the six system alternatives

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<sup>4</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Order Lifting Stay, Rejoining Need And Routing Dockets, And Referring For Contested Case Proceedings*, January 11, 2016, at page 6-7.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 6.

considered in its environmental review in the EIS scoping document, in addition to the Company's preferred route and SA-03-AM."<sup>7</sup>

In response, FOH noted first that the Department's request for clarification "demonstrates a rather extraordinary misunderstanding of the Minnesota Environmental Policy Act and EISs in general."<sup>8</sup> FOH explained that MEPA does not allow the RGU to "take any steps to limit alternatives prior to scoping" the EIS.<sup>9</sup> The very purpose of scoping an EIS is to identify those alternatives that are reasonable based on the scoping comments.<sup>10</sup> To predetermine those alternatives before scoping has even taken place is a clear violation of MEPA.<sup>11</sup>

As part of its discussion on the troublingly misleading comments from the Department, FOH suggested that the Commission could head off any future procedural difficulties in EIS preparation by exercising its authority to form expert advisory councils under § 116D.03.<sup>12</sup> NDPC has misconstrued this suggestion, arguing that it is an untimely request for reconsideration of the Commission's January 11, 2016 Order.<sup>13</sup> To the contrary, FOH was not requesting any changes or modifications to the Commission's January 11, 2016 Order. FOH believes that order was both justified and clearly lawful, and has not asked for it to be modified in any way. However, FOH does have continuing concerns about how that order is being implemented by the Department. FOH is concerned that the preparation of the Sandpiper EIS is proceeding contrary to well-established law and procedure. FOH also believes that the Commission has clear ongoing authority under MEPA to establish advisory councils, and to clarify its position, FOH is submitting the present motion to establish such a council.

On March 3, 2016, the Department of Commerce filed its Memorandum of Understanding ("MOU") with MPCA and DNR regarding the preparation of the EIS for the proposed Sandpiper and Line 3 pipelines. The MOU fails to commit any minimum level of staffing, resources or expertise from MPCA or DNR. It also includes several caveats that could easily prevent any cooperation whatsoever between the agencies.

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<sup>7</sup> Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Request For Clarification*, February 1, 2016, at page 3.

<sup>8</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Response To Minnesota Department Of Commerce's Request For Clarification And Other Parties' Motions For Reconsideration*, February 11, 2016, at page 1. FOH also responded to the many petitions for reconsideration, noting that the Commission was well within its statutory discretion to control the timing of the EIS issuance, as it did in this case.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (citing Minn. R. 4410.2100, subp. 1).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 7.

<sup>13</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *North Dakota Pipeline Company LLC's Response To Friends Of The Headwaters, Carlton County Land Stewards, And Honor The Earth's Requests For Reconsideration*, February 22, 2016, at page 2-3.

## ARGUMENT

### I. THE MOU FILED BY THE DEPARTMENT FAILS TO FULFILL THE COMMISSION'S PREVIOUS ORDER.

The MOU fails to obligate either the DNR or the MPCA to even a minimum level of non-discretionary participation in the EIS, and therefore should be renegotiated. The Commission, in its previous order, authorized the Department to “enter into an agreement with the Department of Natural Resources and the Pollution Control Agency to ensure that the EIS fulfills the requirements of MEPA.”<sup>14</sup> In the discussion that led to this order, Commissioners expressed concern about the anemic participation of these agencies during the Certificate of Need proceedings. During the Certificate of Need proceedings, those agencies were only able to participate to the extent that minimal staff was available to comment, unsolicited and uncompensated, during the public comment periods for the project. The expectation was that a formal agreement between the Department and MPCA and DNR would remedy that deficiency by *dedicating* staff time to EIS assistance. It would give the Department a way to leverage DNR and MPCA resources.

Unfortunately, the MOU filed by the Department last week fails to leverage any resources from MPCA and DNR. Rather, it provides multiple caveats that may result in little or no cooperation at all between the agencies, despite the fact that the Department is embarking on a major EIS with limited experience. Rather than make MPCA and DNR co-lead agencies, therefore obligating them to provide meaningful assistance, the MOU is clear that the Department is the sole lead agency on the EIS.<sup>15</sup> The agreement contains laudable language that the assisting agencies will “ensure that each EIS fulfills applicable MEPA requirements,” but without any specific commitment of resources, this language is largely aspirational.<sup>16</sup> Agency assistance is predicated on the assisting agencies using their “best efforts to provide the staffing resources necessary to accomplish the purpose of this MOU.”<sup>17</sup> Even these “best efforts” are subject to availability, however, as the MOU establishes that “[a]ll obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources for the work undertaken by the Agencies to accomplish the MOU’s purpose and allocation of responsibilities.”<sup>18</sup> This all-encompassing caveat destroys the very purpose of the document itself, which is to ensure that the Department

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<sup>14</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Order Lifting Stay, Rejoining Need And Routing Dockets, And Referring For Contested Case Proceedings*, January 11, 2016, at page 6-7.

<sup>15</sup> See Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Memorandum Of Understanding Between The Minnesota Department Of Commerce And The Minnesota Department Of Natural Resources And The Minnesota Pollution Control Agency*, March 3, 2016, at page 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

has the assistance necessary to produce an adequate EIS. If that assistance and EIS oversight is in fact nominal or even hypothetical because of agency resource limitations, the MOU is rendered virtually meaningless.

It need not be so. An effective MOU could be crafted by the inclusion of a few key provisions that turn potential assistance and oversight into actual assistance and oversight. At a minimum, such an MOU could designate DNR and/or MPCA as RGU and co-lead agencies; or, in the alternative, it could require participation by those agencies in certain areas where they have expertise. The document could also specify areas where DNR and MPCA will provide insight and resources specific to each agencies' areas of expertise, including experience with MEPA implementation. Rather than expressing a desire for the assisting agencies to help with EIS preparation, the MOU could *commit* each agency to a minimum level of resources, staff, or expertise. Importantly, since the MOU appears to imply that the availability of funding and staff time could be at a premium, Minnesota's environmental review regulations specify that the costs of scoping an EIS are "part of the reasonable costs of preparing, reviewing, and distributing the EIS and are to be assessed to the project proposer by the RGU."<sup>19</sup> These scoping costs include staff time, including direct salary and fringe benefit costs, the cost of consultants hired by the RGU, and other direct and indirect costs of the RGU incurred during the scoping process.<sup>20</sup> The MOU could implement this provision by specifying that MPCA and DNR are to be compensated for their contributions through the EIS costs that are assessed to the project proposer. Utilizing this provision could ensure that adequate agency resources are ready and available to provide crucial oversight and assistance to the Department. FOH therefore urges the Commission to direct the Department to renegotiate the MOU to include non-discretionary assistance from MPCA and DNR.

## **II. THE COMMISSION IS AUTHORIZED BY § 116D.03 TO CREATE AN EXPERT ADVISORY COUNCIL THAT WOULD PROVIDE CRUCIAL OVERSIGHT AND ASSISTANCE WITH THE SCIENTIFIC, TECHNICAL AND PROCEDURAL ASPECTS OF EIS SCOPING**

MEPA authorizes RGUs such as the Commission to engage in a wide range of measures to ensure thorough and adequate environmental review, including establishing an expert panel. Sections 116D.02-.03 provide a set of statutory guidelines framing the RGU's responsibilities that are coherent and mutually reinforcing. They are also sweeping in language, and worth quoting in full, as it is easy to forget the scope of this state's clearly expressed policy:

The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances

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<sup>19</sup> Minn. R. 4410.6200, subp. 3 (2015).

<sup>20</sup> *Id.*, subp. 1.

and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, *to use all practicable means and measures, including* financial and *technical assistance*, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.<sup>21</sup>

In order to carry out these grand goals, the statute continues, “it is the continuing responsibility of the state government *to use all practicable means*, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources,” so that the state may (among other goals) “discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner.”<sup>22</sup>

Although the primary means of implementing these lofty goals is through the assurance that important governmental actions are informed by considerations of environmental impacts through environmental review such as EISs, they are not the only means. Section 116D.03 imposes a host of duties on state departments and agencies that are designed to further implement the notion that state actions should be guided not only by principles of economic and technological efficiency, but by concern for the protection of natural resources and habitats. The law thus directs that:

All departments and agencies of the state government *shall*:

.....

(2) utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose *there shall be established advisory councils* or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible.<sup>23</sup>

Both the federal and state environmental review laws are designed not only to inform decisionmakers but to involve the public and affected persons in the decisionmaking process itself. A core requirement of both MEPA and NEPA is that significant governmental action cannot be taken until environmental impact documents are disseminated to the public and

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<sup>21</sup> Minn. Stat. § 116D.02, subd. 1 (2015) (emphasis added).

<sup>22</sup> *Id.*, subd. 2 (emphasis added).

<sup>23</sup> Minn. Stat. § 116D.03, subd. 2(2) (2015) (emphasis added).

individuals have had the opportunity to comment on scoping and drafts of those documents.<sup>24</sup> State environmental review regulations are quite specific on this point, stating that the process “is designed to . . . provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making.”

The requirement to establish expert advisory councils to assist in environmental review, in other words, is not some mere formality or forgotten technicality; it is both a mandatory directive (such councils “shall be established”<sup>25</sup>) and a core function of the law. It is one of the few ways in which MEPA differs from NEPA, its federal corollary and the source of much of MEPA’s language. NEPA states that all federal agencies shall “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment.”<sup>26</sup> MEPA goes one step further: all state departments and agencies shall “utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible.”<sup>27</sup>

MEPA adopts the NEPA language almost verbatim, but adds the second clause requiring the establishment of advisory councils to aid state agencies in their environmental review. This requirement, so distinctive and clear, cannot be ignored. Indeed, NEPA’s § 102 (quoted above) to which § 116D.03 adds the additional advisory council requirement, has been held to be a rigid, enforceable duty:

Thus the Section 102 duties are not inherently flexible. They must be complied with to the fullest extent, unless there is a clear conflict of statutory authority. Considerations of administrative difficulty, delay or economic cost will not suffice to strip the section of its fundamental importance. We conclude then, that Section 102 of NEPA mandates a particular sort of careful and informed decisionmaking process and creates judicially enforceable duties.<sup>28</sup>

As it is drawn so closely to its federal counterpart, MEPA must be interpreted similarly. The statutory mandate to establish expert advisory councils was tailor-made for the very sorts of circumstances seen in this matter: an inexperienced agency charged with a technical, difficult,

<sup>24</sup> See Minn. R. 4410.0300, subp. 3, 4 (2015); 40 C.F.R. § 1506.6 (2015);

<sup>25</sup> Minn. Stat. § 116D.03, subd. 2(2) (2015).

<sup>26</sup> 42 U.S.C. § 4332(A) (2015).

<sup>27</sup> Minn. Stat. § 116D.03, subd. 2(2) (2015).

<sup>28</sup> *Calvert Cliffs Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).



and overwhelming task, exhibiting signs of its unfamiliarity with crucially important MEPA procedures, and relying on the legally incorrect assertions of the project proposer, who has also betrayed its unfamiliarity with those same MEPA procedures. Fortunately, MEPA allows for guidance in these circumstances, and the Commission should avail itself of that guidance by establishing an expert advisory council.

This council could be composed of experts familiar with the EIS process as well as experts that are well-versed in the particular scientific and technical challenges associated with a pipeline project of this scope. Perhaps most importantly, however, state law is quite clear that such a council must be *neutral* and *transparent*.<sup>29</sup> A baseline requirement of such a council, therefore, is that it must not include ‘experts’ that are employees of, affiliates of, or contractors with NDPC. As the project proposer, NDPC will have ample opportunities to let their interests and preferred assumptions be known. But the central nature of environmental review is that it is not simply a post-hoc rationale for justifying predetermined decisions.<sup>30</sup> It is designed to provide objective and authoritative information that would otherwise not be accounted for in the decision. Any expert advisory council formed to consult and advise on the EIS process must therefore be independent, neutral and transparent. Including employees or affiliates of NDPC would violate this general principle, and would violate § 116D.03, subd. 2(3), which requires all state departments and agencies to develop methods and procedures “that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations.” As the project proposer staking significant capital investments and future profits on the outcome of this EIS, NDPC has an explicitly economic interest in the content of the eventual document. Their presence on an expert advisory council would by necessity result in ‘advice’ that was neither independent nor neutral, contrary to state policy on environmental review.<sup>31</sup>

## **II. THE DEPARTMENT’S RECENT COMMENTS DEMONSTRATE AN UNFAMILIARITY WITH EIS PROCEDURES THAT WILL SIGNIFICANTLY INCREASE THE RISK OF AN INADEQUATE EIS, THUS FURTHER DELAYING THESE PROCEEDINGS**

As FOH noted in its February 11, 2016 Response, the Department has become accustomed to the Comparative Environmental Assessment process authorized under Minnesota

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<sup>29</sup> Minn. Stat. § 116D.03, subd. 2(3) (all state departments and agencies shall “identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations”); Minn. R. 4410.0300, subp. 4 (objective of environmental review is to provide *usable* information, to help maintain public awareness of environmental concerns, and encourage accountability in public decision making); Minn. R. 4410.0300, subp 3 (“Environmental documents shall not be used to justify a decision”).

<sup>30</sup> Minn. R. 4410.0300, subp. 3 (2015).

<sup>31</sup> Minn. R. 4410.0300, subp. 4;

Rules Chapter 7852. They have never conducted an EIS on a pipeline before. Indeed, no agency in Minnesota ever has, to FOH's knowledge.<sup>32</sup> Such a novel situation cries out for additional consultation and advice. The novelty of these circumstances alone would typically justify the creation of an experienced council to offer advice, but it is especially necessary here, where the Commission has numerous indications that the Department's understanding of the EIS process is, at best, incomplete.

The Department's recently-filed Memorandum of Understanding ("MOU") with MPCA and DNR will not remedy this problem. Although MPCA and DNR have considerably more expertise with EISs, they have not conducted a pipeline EIS, and would still benefit from expertise specific to pipelines such as Mr. Stolen, and an expert on diluted bitumen. Nor, of course, can they offer the expertise on treaty rights and tribal resources that White Earth and Mille Lacs would bring. Additionally, the MOU is limited and provides no assurance of meaningful cooperation between agencies. MPCA and DNR are not co-lead agencies, and thus have no legal obligation to ensure a quality EIS. There is no discussion in the MOU of how or whether MPCA and DNR will provide staff. The MOU provides for a separate agreement, which has not been filed, to provide for "specific staffing needs." It also states that "All obligations of the Lead Agency and Assisting Agencies under this MOU are contingent upon the appropriation, allotment, or the availability of funding sources..."<sup>33</sup> Thus, any real involvement of MPCA and DNR is both entirely discretionary by the Department, and contingent on other factors, including the availability of funding and staff. Put simply, there is nothing in this agreement that ensures quality involvement by MPCA and DNR.

The Department will make a series of other internal decisions going forward that are not subject to public scrutiny yet are extremely significant, especially for an agency that has not previously conducted a full EIS on a pipeline. An advisory committee as proposed by FOH would not have a "veto" over any of these decisions, but would provide Commerce the opportunity to obtain input before making an important decision. Such an advisory council

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<sup>32</sup> FOH notes, however, that there was state agency involvement in an EIS for the Alberta Clipper pipeline, for which the U.S. Department of State was the lead agency. The Department of State notes that they consulted with other federal agencies in preparing the EIS for the Alberta Clipper project, and that "state agencies also were consulted to ensure that their needs for analyses in relation to their respective state permitting processes would be reflected in the EIS." U.S. Dep't of State, Bureau of Energy Resources, *Final Environmental Impact Statement Executive Summary*, available at <http://www.state.gov/e/enr/applicant/applicants/202453.htm>. (last visited March 1, 2016). Such consultation, clearly, is a far cry from the substantive and procedural duties encompassed by the bearing the sole responsibility for preparing an adequate EIS, particularly where the entire burden falls on the state agency.

<sup>33</sup> See Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Memorandum Of Understanding Between The Minnesota Department Of Commerce And The Minnesota Department Of Natural Resources And The Minnesota Pollution Control Agency*, March 3, 2016, at page 2.

would increase transparency and produce better, more informed decisions, as envisioned by the drafters of MEPA.

Recently the Commission received Comments from the Department that indicate a fundamental misunderstanding of environmental review in general, and MEPA requirements in particular. The DOC suggested that “the discretion to set schedules for contested cases, including schedules for dates of prefiled testimony, is within the ALJ’s purview.”<sup>34</sup> As these comments were submitted in response to the Commission’s Order that the final EIS be issued prior to direct testimony in the contested case proceedings, they appear to indicate the Department’s view that OAH has the discretion to determine when in the contested case proceedings the final EIS must be issued. To the extent that these schedules include dates by which the EIS must be issued, this statement is legally incorrect, and therefore grossly misleading to the Commission. Allowing OAH to determine at what point the final EIS be issued would be an abdication of the Commission’s (and the Department’s, as the Commission’s delegate) responsibilities as the RGU in this matter, thereby clearly violating MEPA.<sup>35</sup>

The Commission is the RGU in this matter. It is the RGU’s responsibility to ensure that the EIS is prepared in accordance with state law,<sup>36</sup> and any abdication of that responsibility is a violation of law:

NEPA establishes environmental protection as an integral part of the [RGU’s] basic mandate. The primary responsibility for fulfilling that mandate lies with the [RGU]. Its responsibility is not simply to sit back, like an umpire, and resolve adversary contentions at the hearing stage. Rather, it must itself take the initiative of considering environmental values at every distinctive and comprehensive stage of the process beyond the staff’s evaluation and recommendation.<sup>37</sup>

As part of this obligation, the *RGU* determines at what stage the EIS is to be prepared, not OAH. Because MEPA is fundamentally a procedural law, the timing of the EIS preparation

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<sup>34</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *Comments Of The Minnesota Department Of Commerce*, February 12, 2016, at page 2.

<sup>35</sup> See *Calvert Cliffs*, 449 F.2d at 1119 (the only agency in a position to ensure decisions are informed by environmental considerations is the RGU; abdication of that key role is a violation of law); *Sierra Club v. Lynn*, 502 F.2d 43, 59 (5th Cir. 1974) (environmental review requirements are directed only to the RGU; delegation of those responsibilities is an unlawful abdication).

<sup>36</sup> See Minn. Stat. § 116D.04, subd. 2a; subd. 2a(g); subd. 2a(h) (2015); Minn. R. 4410.0400, subp. 2 (“RGU’s shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.”).

<sup>37</sup> See *Calvert Cliffs*, 449 F.2d at 1119.

is an essential determination under the law.<sup>38</sup> As federal courts have noted, it is an “important fact of administrative life” that “as time goes on, it will become ever more difficult to undo an improper decision.”<sup>39</sup> MEPA codifies this concern by requiring that certain decisions be informed by a proper consideration of the environmental effects of that decision, and that such consideration take place early enough to influence the decision making process. The primary purpose of MEPA is therefore to identify and study the environmental impacts of a particular decision *before* that decision is made. The Act’s lodestar, in other words, is *informed choice*:

The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment. A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents. Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens *early in the decision making process*.

.....

Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.<sup>40</sup>

Subpart 4 of that Rule states that the process is designed to “provide *usable* information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project.”<sup>41</sup> If the central purpose of the law is to inform a particular decision, the timing of that information’s delivery will determine whether that information is usable or even relevant, which is why the Rules direct the information to be generated and delivered as early as possible.<sup>42</sup>

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<sup>38</sup> See *Calvert Cliffs*, 449 F.2d at 1113 (“However, [NEPA] also contains very important ‘procedural’ provisions – provisions which are designed to see that all federal agencies do in fact exercise the substantive discretion given them. These provisions are not highly flexible. Indeed, they establish a strict standard of compliance.”).

<sup>39</sup> *Sierra Club v. Marsh*, 872 F.2d 497, 503 (1st Cir. 1989).

<sup>40</sup> Minn. R. 4410.0300, subp. 3 (emphasis added).

<sup>41</sup> *Id.*, subp. 4 (emphasis added).

<sup>42</sup> See, e.g., *Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir. 1974) (“The procedures required by NEPA . . . are designed to secure the accomplishment of the vital purpose of NEPA. That result

On judicial review, the central question for the court is whether the agency took a “‘hard look’ at the salient issues,”<sup>43</sup> and in answering this question the *timing* of the EISs issuance is a critical detail. In the present matter it was in fact the *timing* of the EIS issuance that was reversed on appeal, when the Court determined that this Commission could not issue a Certificate of Need without conducting an EIS first.<sup>44</sup> It is therefore a critical role for the RGU to determine when the EIS is to be issued, and abdicating that role to OAH would violate MEPA. Just as the deferral of the EIS was found unlawful in this matter, it would have been similarly unlawful if the RGU had simply allowed OAH to decide whether the EIS would be issued early or deferred until later, which is what the Department is suggesting in its comments to the Commission.

But the RGU’s responsibilities extend beyond merely determining when the EIS shall be issued. Its responsibilities are to oversee the entire process of environmental review as it relates to the decision being considered, to ensure that the decision incorporates a proper consideration of environmental effects. The statute is clear that it is the RGU’s responsibility to ensure coordination between environmental review and permitting.<sup>45</sup> This responsibility is a core function of the RGU, not a mere formality. The coordination between environmental review and permitting is the heart of MEPA, and the RGU must ensure that this coordination renders the environmental review useful, timely, and relevant to properly inform the permitting decision. For the OAH to undertake a crucial role in this regard, by determining when in the contested case proceedings the final EIS should be issued, would be a direct violation of the RGU’s coordination responsibilities.

If there is a conflict between OAH’s procedural rules and an agency order made pursuant to state law, including MEPA, the agency order takes precedence. This is made clear by the state law itself. In cases requiring multiple permits, for instance, the agency may consolidate the hearing process, “notwithstanding any law or rule to the contrary.”<sup>46</sup> That statute also directs the agency to “establish appropriate procedures for the consolidated hearing process.”<sup>47</sup> When it comes to complying with state environmental review laws, the agency cannot delegate crucial procedural milestone scheduling to a non-RGU agency like OAH.

Fortunately, the Commission did not delegate that crucial role in this instance. Rather, it determined that contested case proceedings must begin after the issuance of the final EIS, “[t]o

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can be achieved only if the prescribed procedures are faithfully followed; grudging, pro forma compliance will not do.”).

<sup>43</sup> See, e.g., *Friends of Twin Lakes v. Roseville*, 764 N.W.2d 378, 381 (Minn. Ct. App. 2009).

<sup>44</sup> *In re North Dakota Pipeline Co., LLC*, 869 N.W.2d 693, 698 (Minn. Ct. App. 2015) (“In this case, the completion of an EIS at the certificate of need stage satisfies the imperative identified above by ensuring decision-makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it.”).

<sup>45</sup> Minn. Stat. § 116D.04, subd. 2a(g) (2015).

<sup>46</sup> Minn. Stat. § 116D.04, subd. 2a(g) (2015).

<sup>47</sup> *Id.*

best reconcile the contested case process with the MEPA process, and to avoid delay related to use of the EIS document in that process.”<sup>48</sup> As described in FOH’s February 11, 2016 Response to Minnesota Department of Commerce’s Request for Clarification and Other Parties’ Motions for Reconsideration, the Commission has the legal authority and discretion to take this action, as part of their obligation to ensure that the eventual decision is properly informed.

But the Commission’s suggestion that this scheduling decision is within the purview of the OAH is an alarmingly incorrect statement coming from the RGU’s delegate. Combined with its previous conduct in this case, they presage a very high risk of producing an EIS that is either poorly substantiated, overly restrictive in scope, or otherwise affected by procedural error. Their recent statements are merely the latest instance of a series of events demonstrating an inexperience and unfamiliarity with fundamental principles of environmental review. As but one example, FOH understands that the Department is currently renegotiating an earlier contract with Cardno, rather than put out a new Request for Proposal from other consultants. These negotiations are taking place without oversight or assistance, and these decisions can have irreversible consequences.

EIS preparation is a difficult and technical process, but because MEPA is a fundamentally procedural law, it is critical that the proper procedures and timing are followed. The Department’s inexperience with this process should not be allowed to jeopardize the integrity of both the process and the eventual document, but the Commission can help protect the process by creating an expert advisory council to assist the Department.

### **III. THE COMMISSION’S RELIANCE ON NPDC WOULD CLEARLY VIOLATE MEPA REQUIREMENTS**

FOH is concerned that the Department of Commerce may be allowing NDPC to prepare the scoping EAW, which is unlawful under MEPA. As the Responsible Governmental Unit for this EIS, the Commission is responsible for the content of both the scoping EAW and the EIS.<sup>49</sup> The Commission may not delegate the responsibility for preparation of these key documents to NDPC.

The reasoning for this requirement should be self-evident. NDPC has a strong interest in a narrow EIS that rejects consideration of any serious alternatives and minimizes potential environmental impacts. Under no circumstances should such a conflicted entity be preparing a

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<sup>48</sup> See Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *Order Lifting Stay, Rejoining Need And Routing Dockets, And Referring For Contested Case Proceedings*, January 11, 2016, at page 6.

<sup>49</sup> Minn. R. 4410.1400 (“The EAW shall be prepared by the RGU or its agents... The RGU shall be responsible for the completeness and accuracy of all information.”); Minn. Stat. § 116D.04, subd. 2a (“Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit.”) (emphasis added).

document that is intended to educate the public and inform decision-makers by describing “the proposed action in detail, analyz[ing] its significant environmental impacts, discuss[ing] appropriate alternatives to the proposed action and their impacts, and explor[ing] methods by which adverse environmental impacts of an action could be mitigated.”<sup>50</sup>

Moreover, NDPC is already trying to mislead the Commission in violation of MEPA in its comments. In its February 11, 2016 Response to the Petitions for Reconsideration, NDPC acknowledges that making scoping decisions before the scoping process has been completed would be inconsistent with state law. However, it then argues that, should the Commission consider the Department’s Request for Clarification, it should inform the Department that “six system alternatives were considered for inclusion within the EIS but rejected (and therefore not proposed for inclusion within the EIS) because they do not meet the identified purpose and need for the Project.”<sup>51</sup> This statement is a clear violation of state environmental review laws, and illustrates elementary misconceptions of how to scope an EIS under state regulations.

Under MEPA, the purpose of the scoping process is to focus the EIS on the relevant issues by:

Identify[ing] only those potentially significant issues relevant to the proposed project, define the form, level of detail, content, *alternatives*, time table for preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.<sup>52</sup>

*After* scoping is complete, the RGU will make a “scoping decision” that contains, among other things, the alternatives that will be addressed in the EIS.<sup>53</sup> Thus, it is appropriate for DOC to turn to the Commission for a scoping decision on alternatives, but it is premature to do so prior to scoping.

Eliminating alternatives prior to scoping is illegal under MEPA. This Commission’s decision to grant a certificate of need to the Sandpiper Pipeline was overturned by the Court of Appeals because, under MEPA, the State may not grant a permit to a project prior to completion of an EIS.<sup>54</sup> But the reason for this prohibition is that agencies may not pre-determine significant

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<sup>50</sup> Minn. Stat. § 116D.04, subd. 2a.

<sup>51</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *North Dakota Pipeline Company LLC’s Response To Petitions For Reconsideration*, February 11, 2016, at page 3.

<sup>52</sup> Minn. R. 4410.2100, subp. 1 (emphasis added).

<sup>53</sup> *Id.* at subp. 6.

<sup>54</sup> Minn. Stat. § 116D.04, subd. 2b; *In re North Dakota Pipeline Co., LLC*, 869 N.W.2d 693, 698 (Minn. Ct. App. 2015)(“Therefore, based on the plain language of subdivision 2b, the MPUC’s issuance of a certificate of need constitutes a final governmental decision that is prohibited until the required environmental review is completed.”).

decisions about the project prior to the EIS process.<sup>55</sup> The EIS process is designed to thoroughly vet a proposed project; it is not designed to affirm a decision that was already made. Courts have regularly overturned efforts by agencies to control and limit the outcome of an EIS in this way.

As noted in FOH's Response to Minnesota Department of Commerce's Request for Clarification and Other Parties' Motions for Reconsideration, federal courts have held that agencies that take steps to limit the range of potential alternatives prior to completion of environmental review violate NEPA.<sup>56</sup>

Similarly, if the Commission instructs the Department to eliminate certain alternatives from consideration prior to the scoping process, it will violate MEPA and fail to take a "hard look" at the environmental consequences of this pipeline. The prohibition against action by the state prior to the EIS is not limited merely to granting a permit, but to *any* action that would limit the range of alternatives considered in the EIS too early in the process, thereby "seriously impeding the degree to which their planning and decisions could reflect environmental values."<sup>57</sup> The EIS stage is deliberative – as the Court of Appeals noted, it is intended to study the project and the alternatives early in the process, such that "important environmental effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."<sup>58</sup> To refuse to study system alternatives at this stage is no different than granting a certificate of need prior to an EIS – it commits the State to a particular project and location before the environmental effects have been fully understood.

NDPC's comments in this regard are unusual and alarming not only because they would constitute reversible error if followed by the Commission, but also because NDPC's reasoning is based on the Commission's Order Granting Certificate of Need that was *invalidated* for failure to comply with environmental review laws.<sup>59</sup> It is frankly absurd to suggest that the Commission may restrict the alternatives prior to scoping, in violation of MEPA, because the Commission had already rejected those alternatives in an Order that was made illegally in this very case. The Court of Appeals found that the Commission could not grant a certificate of need specifically because it was considered prior to completion of an EIS. NDPC is now suggesting to the

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<sup>55</sup> *In Re NDPC*, 869 N.W.2d at 698-99 ("In this case, the completion of an EIS at the certificate of need stage satisfies the imperative identified above by ensuring decision-makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it.").

<sup>56</sup> Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *FOH's Response To Minnesota Department Of Commerce's Request For Clarification And Other Parties Motions For Reconsideration*, February 11, 2016, at page 3-4.

<sup>57</sup> *Metcalf*, 214 F.3d at 1143-44 (quoting *Save the Yaak Comm. v. Block*, 840 F.2d 714, 718-19 (9th Cir. 1988)).

<sup>58</sup> *In Re NDPC*, 869 N.W.2d at 698.

<sup>59</sup> See Docket Nos. PL-6668/CN-13-473; PL-6668/CN-13-474, *North Dakota Pipeline Company Llc's Response To Petitions For Reconsideration*, at page 3.



Commission that it may disregard the Court of Appeals opinion and re-adopt that invalidated decision, and in so doing, illegally restrict the alternatives prior to scoping. This is, to say the least, faulty reasoning, and the fact that it is coming from the project proposer and a party of obvious significance and influence in these proceedings makes the need for oversight quite clear.

If the Commission were to rely on NDPC's preparation of an EAW, or its statements in this matter, its actions would likely be reversed on appeal for a second time. The primary parties in this matter – the RGU's delegate and the project proposer – have amply demonstrated an unfamiliarity with, and dangerously erroneous understanding of, the legal requirements for EIS preparation. Rather than risk further delays, the Commission should exercise its authority to create an advisory council that can correct any such errors before they are propagated into an inadequate EIS document.

### CONCLUSION

EIS preparation is a complex task, substantively as well as procedurally. To FOH's knowledge, this is the first instance in which a Minnesota agency has conducted an EIS on a pipeline without federal support. It is a difficult task even for an experienced agency, but for an inexperienced agency like the Department, assistance and oversight are critical, especially where it may be relying on the project proposer to the detriment of the EIS. FOH therefore urges the Commission to utilize all resources available to it and the Department, including a revised MOU providing for non-discretionary assistance from DNR and PCA, and the advisory councils of § 116D.03.

Dated: March 9, 2016

Respectfully submitted,

/s/ Kathryn Hoffman

/s/ Kevin P. Lee

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Kathryn Hoffman  
 Kevin P. Lee  
 Minnesota Center for Environmental Advocacy  
 26 E. Exchange Street, Ste. 206  
 St. Paul, MN 55101  
 (651) 287-4861

*Attorneys for Minnesota Center for  
 Environmental Advocacy and Friends of the  
 Headwaters*

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matters of Enbridge, Limited Partnership, for  
a Certificate of Need and Pipeline Routing Permit  
for the Line 3 Replacement Project

MPUC Docket Nos. PL-9/PPL-15-137  
PL-9/CN-14-916  
OAH Docket No. 65-2500-32764

**AFFIDAVIT OF SERVICE**

In the Matters of the Application of North Dakota  
Pipeline Company LLC for a Certificate of Need for  
the Sandpiper Pipeline Project in Minnesota

MPUC Docket Nos. PL-6668/CN-13-473  
PL-6668/PPL-13-474  
OAH Docket Nos. 8-2500-31260  
8-2500-31259

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF RAMSEY )

Erin Mittag, being duly sworn, says that on the 9<sup>th</sup> day of March, 2016, she served via e-dockets the following:

- Motion To Order The Department Of Commerce To Renegotiate The Memorandum Of Understanding And To Establish An Expert Advisory Council Under Minn. Stat. § 116D.03, filed on behalf of Friends of the Headwaters

on the following persons, in this action, by filing through e-dockets or mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at St. Paul, Minnesota, directed to said persons at the last known mailing address of said persons:

Attached Service List.

  
Erin Mittag

Subscribed and sworn to before me  
this 9<sup>th</sup> day of March, 2016

  
Karen Moss



**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A15-0016**

In the Matter of the Application of North Dakota Pipeline Company LLC  
for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota.

In the Matter of the Application of North Dakota Pipeline Company LLC  
for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota.

**Filed September 14, 2015  
Reversed and remanded  
Klaphake, Judge\***

Public Utilities Commission  
File No. PL-6668/CN-13-473, PL-6668/PPL-13-474

Leigh K. Currie, Kathryn M. Hoffman, Minnesota Center for Environmental Advocacy,  
St. Paul, Minnesota (for relator Friends of the Headwaters)

Lori Swanson, Attorney General, Alethea M. Huyser, Leah M. P. Hedman, Max Kieley,  
Assistant Attorneys General, St. Paul, Minnesota (for respondent Minnesota Public  
Utilities Commission)

Richard D. Snyder, John E. Drawz, Patrick D.J. Mahlberg, Fredrikson & Byron, P.A.,  
Minneapolis, Minnesota (for respondent North Dakota Pipeline Company LLC)

Gerald W. Von Korff, Rinke Noonan, St. Cloud, Minnesota (for amicus curie Carlton  
County Land Stewards)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and  
Klaphake, Judge.

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## SYLLABUS

When certificate of need proceedings precede routing permit proceedings for a large oil pipeline, the Minnesota Environmental Policy Act requires that an environmental impact statement be completed before a final decision is made on the certificate of need.

## OPINION

**KLAPHAKE**, Judge

Relator argues that conducting certificate of need proceedings for a large oil pipeline prior to the completion of an environmental impact statement violates the Minnesota Environmental Policy Act (MEPA). All parties agree that the pipeline is subject to environmental review under MEPA, but this review is set to occur during the routing permit proceedings after a certificate of need has been granted. Because the decision to grant a certificate of need for a large oil pipeline constitutes a major governmental action that has the potential to cause significant environmental effects, we conclude that MEPA requires an environmental impact statement to be completed before a final decision is made to grant or deny a certificate of need. Accordingly, we reverse and remand for respondent Minnesota Public Utilities Commission (MPUC) to reconsider whether to issue a certificate of need after an environmental impact statement has been completed.

## FACTS

Relator Friends of the Headwaters (FOH) challenges the MPUC's order to proceed with a final decision on a certificate of need for a large oil pipeline, arguing that to do so without preparing the required environmental analysis will violate the MEPA.

In November 2013, intervenor North Dakota Pipeline Company LLC (NDPC) filed applications for a certificate of need and a pipeline routing permit with the MPUC to construct a 612-mile pipeline to transport crude oil from Tioga, North Dakota to terminals in Clearbrook, Minnesota and Superior, Wisconsin. Approximately 300 miles of the proposed pipeline would cross northern Minnesota carrying between 225,000 and 375,000 barrels of oil per day.

In February 2014, the MPUC accepted the applications as substantially complete and referred both matters to the Minnesota Office of Administrative Hearings for joint contested case proceedings on the certificate of need and routing permit. The MPUC also directed the Energy Environmental Review and Analysis unit (EERA) of the Minnesota Department of Commerce to facilitate the development of alternative route proposals to those proposed by NDPC.

In March, EERA held seven public meetings in six counties along the proposed pipeline route. More than 1,000 comments were submitted by 940 commenters and organizations in response to the notice for comments. After reviewing these extensive comments, EERA identified 62 alternative project proposals for consideration as part of the ongoing proceedings. In identifying these proposals EERA made a distinction between proposed route and system alternatives. Consistent with previous MPUC

dockets, “route” alternatives were defined “as a deviation from the [NDPC’s] proposed route to address a concern or issue and met the stated purpose and need of the proposed project with no apparent major engineering or environmental issues.” In contrast, a “system” alternative represented “a pipeline route that is generally separate or independent of the pipeline route proposed by [NDPC], and that does not connect to the specified Project endpoints (the North Dakota border to Clearbrook and Clearbrook to Superior, Wisconsin).” EERA designated 8 of the identified proposals as system alternatives and 54 as route alternatives.

After additional comments and a public hearing, the MPUC accepted 53 of the route alternatives and one of the system alternatives for consideration in the routing permit contested case hearing. Around the same time, many organizations and agencies raised concerns about conducting the certificate of need and routing permit proceedings jointly based on the complexity of the issues facing the parties and the MPUC.

In September, the MPUC held a public hearing on the issue of bifurcating the proceedings and staying the routing permit proceedings pending completion of the certificate of need proceedings. At the hearing, the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR), as well as EERA recommended bifurcating the proceedings, with the certificate of need proceedings occurring first. These parties also urged the MPUC to forward the remaining system alternatives for consideration during the certificate of need proceedings. FOH and Amicus Carlton County Land Stewards supported bifurcating the proceedings, but also argued that MEPA required the MPUC to prepare an environmental impact statement

(EIS) evaluating both route and system alternatives prior to making a final decision in the certificate of need proceedings. NDPC opposed both the proposed bifurcation of proceedings and further consideration of the remaining system alternatives as part of the certificate of need process. NDPC also argued that preparation of an EIS at the certificate of need stage in bifurcated proceedings would be unnecessary and inappropriate, because a MEPA-compliant environmental review was already required as part of the routing permit proceedings.

In October, the MPUC ordered that the certificate of need and routing permit proceedings be bifurcated, with the certificate of need proceedings to be completed first. The MPUC also determined that six of the remaining system alternatives should be evaluated as part of the certificate of need proceedings, while the 53 route alternatives and one system alternative would still be reviewed during the routing permit proceedings. Finally, the MPUC directed EERA to conduct a “high-level” environmental review of the six system alternatives to be considered during the certificate of need proceedings. While the MPUC concluded that such a review would assist in developing the record, it acknowledged that this environmental review would “not be equivalent in terms of the specificity and level of detail to a comparative environmental analysis undertaken in the route permit proceeding.” FOH petitioned for reconsideration, which the MPUC denied. This certiorari appeal follows.

## ISSUES

Does MEPA require the completion of an environmental impact statement before the MPUC makes a final decision on a certificate of need for a large oil pipeline?

## ANALYSIS

This court will affirm an administrative agency's decision unless its findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2014). This court affords the decision of an administrative agency “a presumption of correctness” and defers to its expertise. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278-79 (Minn. 2001). That deference extends to the agency's interpretation of a statute it is charged with enforcing only if the statute in question is ambiguous and the agency's interpretation is “one of long standing.” *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007). But this court does not defer to an agency's statutory interpretation when the language “is clear and capable of understanding.” *Id.* at 513. Rather, this court effectuates the intent of the legislature by interpreting the text of the statute according to its plain language. *Minn. Transitions Charter Sch. v. Comm'r of Minn. Dep't of Educ.*, 844 N.W.2d 223, 227 (Minn. App. 2014), *review denied* (Minn. May 28, 2014). This includes consideration of the statute “as a whole,” accounting for the context of the surrounding words and sentences. *In re Minn. Power*, 838 N.W.2d 747, 754 (Minn. 2013).



All parties agree that a MEPA-compliant environmental review must be completed at some point during the pipeline approval process. The sole issue on appeal is when that review must be carried out. Traditionally, certificate of need and routing permit proceedings for pipelines have been conducted jointly. Under the routing permit requirements in Chapter 7852 of the Minnesota administrative rules, an applicant must conduct a comprehensive environmental assessment. *See* Minn. R. 7852.1500 (2013). The Minnesota Environmental Quality Board (EQB) has approved this environmental assessment as an acceptable alternative to the formal EIS otherwise required by MEPA for large oil pipelines. *See* Minn. Stat. § 116D.04, subd. 4a (2014) (authorizing the EQB to “identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement”). While this alternative environmental review is associated with the routing permit process, because certificate of need and routing permit proceedings typically occurred simultaneously, the MPUC generally has effective access to a MEPA-compliant environmental review while considering both applications.

Here the MPUC deviated from its usual practice and chose to conduct the certificate of need proceedings prior to the routing permit proceedings. As a result, the MEPA-compliant environmental review associated with the routing permit would not occur until after a decision was made on the certificate of need. Neither party challenges the underlying decision to bifurcate the proceedings, but FOH argues that making a decision on the certificate of need in the absence of an EIS violates MEPA. The MPUC and NDPC contend that requiring an EIS at the certificate of need stage is inconsistent

with the EQB's longstanding determination that the alternative environmental review conducted as part of the routing permit proceedings satisfies MEPA. We agree with FOH, and see this as a simple question of statutory interpretation that requires us to examine the plain meaning of two MEPA provisions.

Minn. Stat. § 116D.04, subd. 2a (2014), requires the responsible governmental unit to prepare a detailed EIS before engaging in any "major governmental action" that creates the "potential for significant environmental effects." MEPA defines "governmental action" as "activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government." Minn. Stat. § 116D.04, subd. 1a(d) (2014). The MPUC's overall approval of the pipeline project constitutes a governmental action under this definition. No one disputes that the construction of the pipeline has the potential for significant environmental impacts, and all parties agree a MEPA-compliant environmental review is required at some point during the pipeline approval process. *See* Minn. R. 4410.4400, subp. 24 (2013) (mandating EIS for pipelines). Accordingly, it is clear that under subdivision 2a, a detailed EIS is required for the pipeline.

Having established that an EIS is required under subdivision 2a, we must turn to subdivision 2b, which states:

If an environmental assessment worksheet or an environmental impact statement is required for a governmental action under subdivision 2a, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:

- (1) a petition for an environmental assessment worksheet is dismissed;
- (2) a negative declaration has been issued on the need for an environmental impact statement;

(3) the environmental impact statement has been determined adequate; or

(4) a variance has been granted from making an environmental impact statement by the environmental quality board.

Minn. Stat. § 116D.04, subd. 2b (2014). Relying on subdivision 2b, FOH contends that the issuance of a certificate of need constitutes a “final governmental decision” to grant a permit, and as such is prohibited until an EIS has been completed. We agree. For purposes of MEPA, the definition of permit includes a “*certificate*, or other entitlement for use or permission to act that may be granted or issued by a governmental unit.” Minn. R. 4410.0200, subp. 58 (2013) (emphasis added). This unambiguous definition encompasses a certificate of need. All parties also agree that once the MPUC decides to grant a certificate of need, its decision regarding the issuance of that specific permit is final. Therefore, based on the plain language of subdivision 2b, the MPUC’s issuance of a certificate of need constitutes a final governmental decision that is prohibited until the required environmental review is completed.

We are also not convinced that an EIS is not required before a certificate of need may be issued simply because the EQB has approved the environmental assessment associated with the routing permit process as an adequate alternative to a formal EIS. While the substance of this alternative review process may be equivalent to an EIS, its approval as an alternative by the EQB says nothing about when a final governmental decision to grant a permit may or may not be made in the absence of an EIS, which is specifically addressed by subdivisions 2a and 2b. Minn. Stat. § 116D.04, subds. 2a, 2b. We also note that the legislature could have clearly stated that a certificate of need for a

large oil pipeline was excluded from the environmental review requirements of MEPA, but it declined to do so. *See* Minn. Stat. § 116D.04, subd. 2a(a) (authorizing EQB to establish categories of action for which an EIS is mandatory and identifying certain actions for which an environmental assessment worksheet or EIS shall not be required). As a result, in the absence of a statutory exclusion or an explicit statement by the EQB that the approved routing permit application process supplants the need for environmental review at the certificate of need stage, subdivisions 2a and 2b must control our determination of whether environmental review is required. The unambiguous language of those provisions mandates that in a situation such as this, when the MEPA-compliant environmental review would not occur until after a certificate of need was issued, an EIS must be completed as part of the certificate of need proceedings.

Finally, we point out that requiring an EIS during the initial certificate of need proceedings affirms the emphasis MEPA places on conducting environmental review early on in the decision-making process. Specifically, MEPA states that, “[t]o ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.” *Id.*, subd. 2a. This emphasis on timing is also consistent with the way federal courts have applied the National Environmental Policy Act (NEPA), which we may look to for guidance when interpreting MEPA. *See Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 468 (Minn. 2002). The United States Supreme Court has explained that the early-stage environmental review similarly required by NEPA is critical because it “ensures that that important [environmental] effects will not be overlooked or

underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S. Ct. 1835, 1845 (1989).

In this case, the completion of an EIS at the certificate of need stage satisfies the imperative identified above by ensuring decision-makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it. Moreover, completion of an EIS at the initial certificate of need stage seems particularly critical here because once a need is determined, the focus will inevitably turn to where the pipeline should go, as opposed to whether it should be built at all. We acknowledge that the MPUC did order a high level environmental review to be considered during the certificate of need proceedings. But as the MPUC noted, this review was not meant to serve as a substitute for the more rigorous and detailed review needed to satisfy MEPA, and it cannot take the place of a formal EIS now. Accordingly, we conclude the MPUC erred by not completing an EIS at the certificate of need stage as MEPA requires.

## D E C I S I O N

Where routing permit proceedings follow certificate of need proceedings, MEPA requires that an EIS must be completed before a final decision is made on issuing a certificate of need. Therefore, we reverse the grant of a certificate of need and remand to the MPUC to complete an EIS before conducting certificate of need proceedings consistent with this opinion.

**Reversed and remanded.**

**STEPHEN L. ROE**  
 11663 Whitefish Ave  
 Crosslake, Minnesota 56442-2042  
 218-692-3331 home  
 218-232-3554 cell  
[roetreat@crosslake.net](mailto:roetreat@crosslake.net)

March 18, 2016

Delivered via Electronic Email Service

Mr. David Fredrickson, Chair  
 Minnesota Environmental Quality Board  
 520 Lafayette Rd.  
 St. Paul, Minnesota 55155

Re: Comments on the Request for Change of RGU in regard to the Environmental Review for current proposed pipelines in Minnesota.

Dear Chairman Fredrickson,

I am writing as a resident of the Whitefish Lake Chain of Lakes. I am concerned with all matters concerning the proposed route of the Sandpiper, Line3 and future pipelines across the Pine River Watershed, a sub-watershed of the Mississippi Watershed here in Cass and Crow Wing Counties.

I believe that a full and complete EIS would reveal the disastrous threat of spills to this pristine area of rivers, streams, creeks and waterways that flow from the proposed pipeline route. To continue this review with the prior review agencies might not be the best process going forward. The recent court decision supports that position, and that a full and complete EIS is required. Qualified personnel are required to produce a high quality EIS.

We must involve the DNR, MPCA, MEPA, Tribal Interests and the public, particularly those of us who live and work in the shadow of this project. You might also consider enlisting the input of the USGS, EPA and the USACE. These organizations have significant knowledge and experience relative to the environmental issues that should be considered when reviewing the route of these pipelines.

Therefore, on behalf of our citizen's right to a clean and healthy environment and to defend the functional integrity of the Minnesota Environmental Policy Act (MEPA) as administered by the Environmental Quality Board (EQB), I hereby request that you consider the requested change in the Responsible Governmental Unit (RGU) for the subject pipeline. The request for this change justified under in Minnesota Statute 4410.500 Subpart 5 for General RGU Selection and/or under the RGU exceptions clause in Subpart 6 of that rule.

Respectfully,

Stephen L. Roe  
 PRWA Board Member

Cc: Will Seuffert, Executive Director, Minnesota Environmental Quality Board  
 Dan Wolf, Executive Secretary, Minnesota Public Utilities Commission  
 Mike Rothman, Commissioner, Division of Energy Resources, Minnesota Department of Commerce  
 John Linc-Stine, Commissioner, Minnesota Pollution Control Agency  
 Tom Landwehr, Commissioner, Minnesota Department of Natural Resources

March 20, 2016

David Fredrickson  
 Chairman of the Board  
 Minnesota Environmental Quality Board (EQB)  
 520 Lafayette Rd  
 St Paul Minnesota 55155

RECEIVED  
 MAR 22 2016

BY: .....

Will Seuffert  
 Executive Director  
 Minnesota Environmental Quality Board (EQB)  
 520 Lafayette Rd  
 St Paul Minnesota 55155

Courtney Ahlers-Nelson  
 Planning Director  
 Environmental Review Program  
 Minnesota Environmental Quality Board (EQB)  
 520 Lafayette Rd  
 St Paul Minnesota 55155

Re: Sandpiper and Line 3 RGU changed from PUC to PCA and/or DNR

Fellow Minnesotans:

I am corresponding to you as an individual and resident of Warba, Minnesota which is three hours north of you up Highway 65 and four miles from the Alberta Clipper. I have testified orally and in writing for the past few years on the two Clipper upgrades, the Sandpiper, and Line 3 and have been very disappointed concerning how flawed the process is from the ALJ to the DOC to the PUC. However I will confine myself to Sandpiper/Line 3 comments.

It is really incumbent upon the EQB to change the RGU to the PCA and/or DNR in light of the recent court decision requiring an EIS and not just a CEA for the new upcoming and proposed 'new pipeline corridor' piercing the heart of Northern Minnesota's lake and wetlands country. Can we expect anything but a 'wolf in sheep's clothing' with the PUC (and the DOC) dressing up the same old CEA in a pretty new EIS dress?

Can we expect anything but bias from the PUC, DOC, and ALJ who, shockingly, refused to even comment on the negative critiques of the PCA and DNR concerning the Enbridge proposed route in Sandpiper testimony? Is money and cost the ONLY driving issue rather than routing a pipeline farther south through farmland where a spill can be cleaned up easily in contrast to it getting into a wetland, lake, river, stream, or aquifer farther north? The current routing is crazy on its face.

We know all of these pipelines will all break. It is only a question of time. Enbridge NEVER replaces a pipeline except when they have an ulterior motive in the case of Line 3. They still operate a 66 year old pipeline going through Red Lake and they still operate a 62 year old pipeline going under the Mackinac Straits which could pollute a sizeable segment of the Great Lakes. They only are replacing Line 3 from the 60's because they are prohibited by its 900 'anomalies' from running it to capacity with tar sands AND they are getting a two-fer if the State allows them to let it lie in place so they don't have to dig it up which would uncover all the little leaks slowly wending their way down to the groundwater they would be mandated to spend a lot of money cleaning clean up.

To have the PUC (DOC) do the environmental assessment is a conflict of interest with the mandate of the DOC to regulate (promote) commerce. Peer Review should be the guiding principle. PCA has obviously got a lot more staff and experience in dealing with pipelines and their leaks and the DNR has obviously got a knowledge regarding proper routings and valued opinions on a WHOLE NEW OIL CORRIDOR than the DOC could ever conceive of. The PCA and DNR can do or can farm out competently a full risk assessment and worst case scenarios.

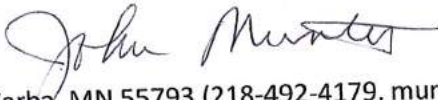
The PCA and DNR have the staff to adequately review alternative routings which the PUC cannot. It is totally unrealistic to expect individuals like me to propose and get accepted another routing against the army of Enbridge arguing against me. This is another very crazy part of the current process.

The Department of Commerce has its place in economic trends, market for oil, and—maybe—alternate carriers such as trains. But, they have not distinguished themselves so far and should not be given a privileged place over other agencies. All their data needs to be re-done in fact in the fast-changing current environment and other agencies need to hold THEIR feet to the fire. The Feds are abolishing the 'bomb train cars' and mandating standards better than the best on the rail these days.

The price of oil is down so far only a few counties in the Bakken can pump at a profit and Alberta really needs oil price in the 85-100\$ a barrel range to make a profit. All these pipelines were being planned in an era that planned on the doubling and tripling of oil volumes. That will not happen for at least many years. It is clear, in fact, that the Saudis plan on bankrupting these oil companies. Now THAT we could, maybe, plan on. Renewables are catching on quickly. The 2012 MN study on renewables said Minnesota could be 100% energy renewable with rooftop solar and wind machines with storage going north to south.

Without a different RGU lawsuits could surely be filed again. The tribes have not been consulted adequately but they engaged in the process showing their desire. By rights, they should file federal lawsuits alleging infringement of the 19<sup>th</sup> century treaty rights to 'hunt, fish, and gather' off reservation if pipelines infringe upon their wild rice. Please do not let the PUC and DOC short-circuit true review.

Sincerely, John Munter

  
14860 Bruce Creek Rd, Warba, MN 55793 (218-492-4179, mumooatthefarm@yahoo.com)





**DELIVERED VIA EMAIL**

March 22, 2016

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Dear Chairman Fredrickson,

By this letter Lake Detroiders Association goes on record supporting the requested change in agencies assigned to prepare the environmental impact statement on the Sandpiper pipeline project.

It came as no surprise to observant citizens that the Department of Commerce would have its divided allegiance manifest itself in any environmental review efforts on this project. From the very beginning it was a dubious assignment of responsibility to have this business oriented department performing regulatory functions dealing with environmental and natural resource impact matters.

The Department of Commerce staff's casual dismissal of alternative routes for this pipeline project that would avoid Minnesota's most valuable, sensitive, and iconic water resources shocks the sensibilities and marginalizes our intelligence as citizens working to protect public waters. Lake Detroiders Association, as well as other Minnesota lake communities, work hard to understand the science of lake water quality protection strategies and put in countless hours volunteering in many state and local programs to protect these resources.

To have the Department of Commerce so cavalierly place these same water resources in harm's way with this enormous hazardous materials transportation project while ignoring admonitions to the contrary from citizens and sister agencies is unacceptable to us. We strongly encourage the Environmental Quality Board to exercise its authority to remedy this problem and place the authority for preparing the EIS in the hands of the agencies better equipped to deal with these issues objectively. The Pollution Control Agency and the Department of Natural Resources are far better suited for this assignment.

The additional suggestion being made by others that these agencies go even further to ensure objectivity and sound science through establishment of independent panels of experts in preparation of this EIS is especially warranted.

Sincerely,

Barb Halbakken Fischburg  
President

copy: Will Seuffert, Executive Director, Minnesota Environmental Quality Board

Lake Detroiders Association • P.O. Box 1503 • Detroit Lakes, MN 56502

*Lake Detroiders Association Promoting the Protection and Enhancement Since 1944*

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Lake Detroiders

[info@lakedetroiters.com](mailto:info@lakedetroiters.com)

March 25, 2016

(Delivered by Electronic Email Service)

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Re: Willis Mattison's request for the EQB to change the Minnesota RGU designation for the State environmental review of two proposed oil pipeline projects (Sandpiper and Line 3 replacement).

Dear Chairman Fredrickson:

Mr. Willis Mattison has recently initiated a process whereby he is requesting that the Minnesota Environmental Quality Board (EQB) change the designation of the Responsible Government Unit (RGU) for conducting the environmental review of the Minnesota's portions of both the N. Dakota Pipeline Company's proposed Sandpiper pipeline project and Enbridge Energy's proposed Line 3 pipeline replacement project.

Specifically, Mr. Mattison is asking the EQB to switch the RGU designation from the MN Public Utilities Commission (PUC) and MN Department of Commerce (DOC) to the MN Department of Natural Resources (DNR) and Minnesota Pollution Control Agency (MPCA).

A major purpose of my letter to you is to enthusiastically support Mr. Mattison's request, which he persuasively justifies through submitted documentation to the EQB.

I also want to demonstrate by way of comparison with the State of Wisconsin's environmental review process, that Wisconsin is more faithfully adhering to its enabling environmental act than is Minnesota.

First, a little background. I worked in air pollution regulations for the Wisconsin DNR (WDNR) for 35 years. Recently retired, I now live in Minneapolis.

Second, as you already know, the WDNR conducts regulatory duties that in Minnesota are collectively performed by the MN DNR (resource management) and the MPCA (environmental control). My air pollution regulatory work, if done for Minnesota, would have been at the MPCA.

Third, both Minnesota and Wisconsin have enacted overall environmental statutes that are modeled after the National Environmental Policy Act (NEPA). The NEPA is a 1969 federal law that requires all federal agencies to submit environmental impact statements for all the major actions that could significantly affect the environment.

The Minnesota Environmental Policy Act (MEPA) was enacted in 1973 (Chapter 116D, Minnesota Statutes). Unlike other states' environmental policy acts, Minnesota's law requires an environmental impact statement (EIS) for all major state government and all major private

actions (which are defined as having more than just local significance) that may have an environmental impact (Section 116D.04, Minnesota Statutes). The list of project types that are exempt from MEPA requirements is relatively small (e.g., feedlots, highway projects, nonmetallic mineral mining and ethanol plants [1]).

The EQB has dutifully recognized that proposed oil pipelines in Minnesota are subject to MEPA requirements.

Similarly, the Wisconsin Environmental Policy Act (WEPA) was enacted in 1972. Additionally, the WDNR also recognizes that proposed oil pipelines in Wisconsin are subject to WEPA requirements. Specifically, according to a Wis DNR web page about energy and utility projects ( <http://dnr.wi.gov/topic/sectors/energy.html> ) the WDNR's Bureau of Environmental Analysis and Sustainability (BEAS) is responsible for coordinating the review of proposed energy and utility projects, including oil pipelines.

Indeed, the WDNR, in February, 2016 under the stated requirements of WEPA (Chapter 150, Wis Administrative Code), issued a Draft Environmental Impact Statement (DEIS) on the concluding 14 mile segments of both the proposed Sandpiper and proposed Line 3 replacement oil pipelines in Douglas County (3).

The WDNR, in this draft EIS (3), also did a significant evaluation of alternative considerations to the project, including route variations (page ES-5)

On the draft EIS's page ES-1 of this draft EIS (3), the WDNR identifies itself "..as the lead agency under the WEPA, the [W]DNR has prepared this draft EIS.."

The "lead agency" designation under WEPA would be approximately the same as the RGU designation under the MEPA requirements.

According to the EQB's "Guide to Minnesota Environmental Review Rules" (2) the EQB has the authority to designate a state agency as the RGU for a particular project that is subject to MEPA requirements. For reasons that are too regulatory-wise and historically complex to explain here, the EQB has designed the MN DOC and the MN PUC as RGUs for proposed pipeline projects.

This RGU designation includes for the proposed Sandpiper and proposed Line 3 replacement oil pipelines in Minnesota.

In Sept, 2015 the Minnesota Court of Appeals ordered, under state law, that a full EIS be completed for the Sandpiper project before the MN PUC could grant a Certificate of Need for it.

Presumably this requirement also applies to the Line 3 replacement project.

It is these specific RGU designations that Mr. Mattison is strongly challenging. Mr. Mattison has submitted substantial documentation in convincing support of his request that the RGU designations be changed to State agencies that are better qualified to prepare an EIS for each of these proposed oil projects (i.e., MN DNR and MPCA).

Of note in the EQB's "Guide to Minnesota Environmental Review Rules" (2, page 6) that:

"The EQB can exercise extraordinary authority to change the RGU. The EQB has limited authority to change an RGU that is properly designated under the rules. The EQB can change the RGU only if making the change results in the appointment of an RGU with greater expertise in analyzing potential environmental impacts (part 4410.0500, subpart 6)."

In the case of the proposed Sandpiper and Line projects in Minnesota– the MN DNR and MPCA clearly qualify as agencies “..with greater expertise in analyzing potential environmental impacts.”

As is demonstrated above, the State of Wisconsin has already designated its WDNR as the so-called RGU (“lead agency”) on preparing an EIS for these same proposed projects in Wisconsin.

The EQB should do the right thing and similarly give RGU designations to the MPCA and MN DNR for these proposed projects.

1. "State environmental policy acts", Ballotpedia web site.  
[https://ballotpedia.org/State\\_environmental\\_policy\\_acts](https://ballotpedia.org/State_environmental_policy_acts) .

2. Minnesota Environmental Quality Board, "Guide to Minnesota's Environmental Rules", 2010.  
<http://www.mnplan.state.mn.us/pdf/rulguid3.pdf> .

3. WDNR: Draft Environmental Impact Statement, Sandpiper Pipeline and Line 3 Replacement Projects Douglas County, Wisconsin, Feb 2016.  
[http://dnr.wi.gov/topic/EIA/documents/Enbridge/SPL3\\_Draft\\_EIS\\_Vol\\_I.pdf](http://dnr.wi.gov/topic/EIA/documents/Enbridge/SPL3_Draft_EIS_Vol_I.pdf).

Sincerely,

William Adamski  
4433 Garfield Ave. S.  
Minneapolis, MN 55419  
Phone: 612-926-8459

Cc: Will Seuffert, Executive Director, Minnesota Environmental Quality Board  
Dan Wolf, Executive Secretary, Minnesota Public Utilities Commission  
Mike Rothman, Commissioner, Minnesota Department of Commerce  
Bill Grant, Deputy Commissioner, Division of Energy Resources,  
Minnesota Department of Commerce  
John Linc-Stine, Commissioner, Minnesota Pollution Control Agency  
Tom Landwehr, Commissioner, Minnesota Department of Natural Resources

**From:** [Kat Eng](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Appoint PCA and DNR as RGU for Sandpiper/Line 3  
**Date:** Monday, May 02, 2016 1:58:24 PM

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From the very beginning, it has been clear that Minnesota's Public Utilities Commission lacks both the capacity and motivation to act on behalf of the public and under consultation with affected tribes in the environmental assessment of the Sandpiper/Line 3 corridor.

I support the request to appoint PCA and DNR as the RGU for the Sandpiper/Line 3 Environmental Impact Statement because they have far greater expertise and greater capacity to execute the high-quality study this project demands.

Kat Eng  
Winona, Minnesota

**From:** [Janet Hill](#)  
**To:** [\\*EQB Pipelines](#)  
**Cc:** [bwj4@comcast.net](mailto:bwj4@comcast.net)  
**Subject:** Change of RGU for Enbridge Sandpiper and Line 3 corridor  
**Date:** Sunday, April 24, 2016 10:27:07 AM

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To the Minnesota EQB Board,

One of our Big Sandy Lake Association board members, Janet Hill, commented verbally on our behalf at the April 20th EQB meeting, but wanted to add a couple of points that she failed to mention in her testimony. The following comments have to do with 4410.0500 RGU SELECTION PROCEDURES, Subpart 6, arguing in favor of assigning a different RGU (the Minnesota Pollution Control Agency) for the project.

In her verbal comment, Ms. Hill described part of the pipeline route drawn by Enbridge, and how it would run under the inlet to Big Sandy Lake in Aitkin County, and continue onward through about 25 miles of Big Sandy's watershed. A pipeline spill in this swampy, often hard-to-access area would be hard to detect and a challenge to repair. This is troublesome, as all of the water in this subwatershed eventually ends up in Big Sandy Lake, the last "stop" in this watershed on the way to the Mississippi.

Ms. Hill didn't mention in her testimony that Big Sandy Lake is one of Minnesota's larger lakes, covering 10.2 square miles, and that its property owners are a major source of property tax revenue for Aitkin County. Big Sandy Lake is the foundation of our local economy, and the reason for essentially all of the businesses in this area. If we put the well-being of a major recreational lake like Big Sandy at risk with the avoidable threat of a poorly planned pipeline corridor, and if the worst happened, the already-tenuous economy of the city of McGregor and of Aitkin County would suffer greatly.

This is the kind of consequence we expose ourselves to if we allow the DOC to do a less than thorough job on the Environmental Impact Statement of Enbridge's proposed pipeline route. Enbridge's proposed route takes none of Aitkin County's economic realities into account. We need an agency that will take the EIS seriously, which the MPCA has proven that it does, to study *all* of the consequences of an oil pipeline corridor through Minnesota's watery areas.

Directly related to this local area is the issue of jobs. Many people bring up jobs when talking about Enbridge's proposal, but forget to consider that many *existing, permanent* jobs could disappear if we don't do a thorough job analyzing this project.

Enbridge's opposition to changing the RGU should raise a red flag, as it begs the question as to why they are opposed to having the MPCA or DNR in charge of the EIS. The MPCA has the relevant expertise for environmental review that the DOC does not have, and that is *crucial* for a project of this immensity and permanence. I trust that you will give this major project the careful consideration it requires. There is currently no rush; we need to take the time required to get this right.

Thank you.

Bruce Johnson, President of the Big Sandy Lake Association  
Submitted by Janet Hill on his behalf

**From:** [Maurice Spangler](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** change of RGU for Sandpiper and for Line 3 revision pipeline  
**Date:** Wednesday, April 13, 2016 2:25:46 PM

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Sirs/Madams: Currently the Minnesota Department of Commerce, with the Public Utilities Commission, is the RGU for the Sandpiper/Line 3 revision pipeline EIS. I request that the RGU be changed from the DOC, the state agency primarily tasked with promoting Commerce, to a state agency primarily tasked with environmental issues--the MPCA or DNR. The DOC, in its previous EAW for the Sandpiper line, did a quantitative rather than a qualitative analysis of water crossings for the company's preferred route. This analysis said that a ditch along a farm field was equivalent to a river, lake or wild rice bed which is obvious nonsense.

The proposed route for these two pipelines goes through some of the best water resources in Minnesota. The recent National Academy of Sciences report on how spills of diluted bitumen (tar sands oil) affect water bodies is very scary. The NAS says that if spills of dilbit aren't mitigated immediately, the oil will sink and become permanently bound to the bottom structures and vegetation and cause who knows what long term effects. The MPCA found 28 water crossing along the preferred route that would require construction of a road if a leak were to occur at those spots. Roads cannot be constructed immediately especially in winter.

The DOC also summarily dismissed system alternatives for the Sandpiper, saying that those alternatives did not satisfy the needs of the oil company for getting its oil from Clearbrook to Superior, WI. They insist that the need for the pipeline equals the need of the Enbridge/NDPC rather than the need of Minnesota. Most of the oil being transported is not destined for our use but, rather, for eventual shipment overseas. Minnesota waters should not bear the risk of oil spills for the sake of profits for oil companies. Changing the pipeline route to an area where clean waters won't be endangered and where leaks can be quickly mitigated should be a priority.

Oil spills have happened and continue to happen--from the huge spill near Kalamazoo, MI, in 2010 to the more recent one in southeastern South Dakota. Pipeline companies won't guarantee that their pipes won't leak.

Politicians, too often concerned with tax collections and short term jobs, state that pipelines are safer than rail transport. Safety depends on what is defined. Explosions of rail cars cause immediate and tragic effects. Leaks of oil into water causes long term, less dramatic tragic effects. Rail transport will always be used for oil since it is faster and more flexible with respect to where oil is shipped. Rail transport safety will still need to be worked on whether new pipelines are built or not.

A scientific approach is needed to assess the best route for this oil transport and the reason it is needed, not a commerce approach that prioritizes corporation profits and desires. Please change the RGU to a department that deals with environmental protection. Thank you.

Maurice Spangler, 15995 Freedom Drive, Park Rapids, MN 56470

**From:** [Jason George](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Comment on changing RGU for pipelines  
**Date:** Monday, May 02, 2016 3:00:56 PM  
**Attachments:** [Local 49 comments on RGU proposal at EOB.pdf](#)

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Please see attached comment for the public record.

Thanks

Jason George  
Director of Special Projects  
International Union of Operating Engineers, Local 49  
Cell: 612-791-2585



# International Union of Operating Engineers

LOCAL NO. 49, 49A, 49B, 49C, 49D, AND 49E  
MINNESOTA • NORTH DAKOTA • SOUTH DAKOTA

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Business Manager/Financial Secretary

Affiliated with the A.F.L. – C.I.O.

2829 Anthony Lane South, Minneapolis, MN 55418-3285  
Phone (612) 788-9441 • Toll Free (866) 788-9441 • Fax (612) 788-1936

5/2/16

To Whom It May Concern:

On behalf of the International Union of Operating Engineers Local 49, and our more than 13,000 members, I wish to comment on the Environmental Quality Board consideration of changing the responsible government unit (RGU) for pipeline permitting. This responsibility currently lies with the Minnesota Public Utilities Commission (MPUC) and the Minnesota Department of Commerce (DOC). I believe that is where it should stay.

The MPUC and DOC have been responsible for pipeline permitting in Minnesota for decades and have a tremendous amount of experience. There is a memo of understanding between the Minnesota Pollution Control Agency (PCA), Minnesota Department of Natural Resources (DNR), and the DOC that requires them to work together on environmental permitting. This arrangement allows the MPUC to utilize the specific expertise of each state agency to help them make decisions regarding pipeline permits.

The groups petitioning you to change the RGU are suggesting you give pipeline permitting authority to the PCA and DNR. The PCA and the DNR have filed comments on the record telling you that you should maintain the RGU with the MPUC and the DOC.

I am not sure what more you need to know. The very agencies that are being asked to take pipeline permitting over are telling you they don't want to do so, and to keep the current process in place. That should be the end of this discussion, and I hope it will be.

There are two major privately funded pipeline proposals before the state right now. At stake are thousands of good paying construction jobs, the reduction of oil trains in our communities, tens of millions of dollars in tax revenue for local governments, and millions of dollars in commerce for communities that desperately need the business.

All state agencies, including the EQB, should be focused on getting these projects permitted.

Sincerely,

Jason George  
Special Projects Director  
International Union of Operating Engineers Local 49

**From:** [SHARON NATZEL](#)  
**To:** [\\*EOB Pipelines](#)  
**Cc:** [Ahlers-Nelson, Courtney \(MPCA\); sorgwweh@aol.com](#)  
**Subject:** Comment on Request for Different Responsible Governmental Unit  
**Date:** Monday, May 02, 2016 3:57:36 PM

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Dear Minnesota Environmental Quality Board,  
Please designate the MPCA as the RGU for the Sandpiper Pipeline and Line 3 Replacement Pipeline Project with the greater responsibility for supervising or the project with the quality of the MN water put at risk by pipeline spills over its 50 year lifecycle.

Water is MN greatest resource. Water is becoming scarce in many parts of the world already. Water is like Blue Gold. It is worth more morally and ethically than oil as water is a necessary ingredient for life. Because oil can contaminate water we should not risk polluting our waters with pipelines through the headwaters and lakes areas of MN. I believe the MPCA with their role in preserving the quality of our waters is best suited to look out for the interests of all Minnesotans. We should consider that Lake Superior and the Mississippi River provides drinking water beyond MN and someday may be needed for others in the USA and globally.

The other governmental units like the DNR who looks after quantity of water and DOC should be consulted and involved but not have veto power over the MPCA. I believe the MN Rule 4410.0500 supports this designation for MPCA as RGU for the Sandpiper Pipeline and Line 3 Replacement Pipeline Projects.

Thank you!

Sincerely,  
Sharon Natzel  
13623 County 20  
Park Rapids, MN 56470

**From:** [Joe Plummer](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Comment Response for EQB  
**Date:** Monday, May 02, 2016 1:43:08 PM  
**Attachments:** [SKMBT\\_C36416050200470.pdf](#)

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Please find attached White Earth Nation's comment response for EQB to relieve PUC/DOC as RGU in Favor of MPCA and/or MN DNR for EIS for Sandpiper and Line 3 Pipeline Projects.

Sincerely,

Joe Plumer  
White Earth Tribal Attorney



## White Earth Reservation Tribal Council

P.O. Box 418  
 White Earth, Minnesota 56591  
 Tel. (218) 983-3285  
 Fax (218) 983-3641

CHAIR  
 VACANT

SECRETARY-TREASURER  
 Tara Mason

DISTRICT I  
 Steven "Punky" Clark

DISTRICT II  
 Kathy Goodwin

DISTRICT III  
 Kenneth Bevins

April 29, 2016

Mr. David Fredrickson, Chairman  
 Minnesota Environmental Quality Board  
 520 Lafayette Road  
 St. Paul, Minnesota 55155

Re: Comment Response for EQB to Relieve  
 PUC/DOC as RGU in Favor of MPCA and/or MN DNR  
 For EIS for Sandpiper and Line 3 Pipeline Projects

Dear Chairman Fredrickson,

We are writing today as the governing body of the White Earth Nation to provide comments for the Environmental Quality Board ("EQB") to relieve the Minnesota Public Utilities Commission ("PUC") of its current Responsible Government Unit ("RGU") status for the above-entitled projects, and replace the PUC with a joint RGU consisting of the Minnesota Pollution Control Agency ("MPCA") and the Minnesota Department of Natural Resources ("MN DNR"). Minnesota Rule 4410.0500, Subp. 6 also provides for selection of the RGU for environmental reviews and provides that *the EQB may designate . . . a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.* Because the PUC's designee to complete the Environmental Impact Statement ("EIS") for these two large energy projects, the Minnesota Department of Commerce ("DOC"), has already demonstrated that it is not capable of this task we request that the EQB

designate the state agencies most fluent in protecting the human and natural environments as the RGU: the MPCA and the MN DNR.

We appreciate the opportunity to provide comments on the important decision as to which agency should be entrusted to serve as the RGU with respect to the EIS process for the joint Sandpiper and Line 3 proposed projects, and we thank you for taking the time to consider our perspective on this issue. The White Earth Nation is directly impacted by these two large proposed projects, and we are very concerned that if the DOC remains as the RGU with responsibility for overseeing the EIS for the Sandpiper and Line 3 projects that the EIS will not be as comprehensive as it needs to be. The White Earth Nation has intervened in the PUC proceedings involving the Sandpiper project, and we have been directly involved in the proceedings for the past two years. We have seen firsthand how the DOC has managed the environmental review thus far, and we are convinced that it is essential for the DOC to be relieved of this responsibility forthwith.

It only makes common sense to entrust the MPCA and the MN DNR as the RGU for these controversial large energy projects, since they are the state agencies whose direct responsibilities include the protection and preservation of our human and natural environments. The DOC does not regulate pipelines or oil, nor is the DOC an agency that is charged with environmental protection or protecting public health. Instead, the DOC facilitates and regulates business and capital flow for the state of Minnesota. The MPCA and the MN DNR are the state agencies charged with stewardship of natural resources and environmental protection, and have long demonstrated the requisite expertise and experience necessary to produce an EIS with the breadth, depth, and quality required for these large energy projects.

We are very frustrated with the Public Utilities Commission process for the Sandpiper and Line 3 projects thus far, primarily because of the lack of meaningful consultation with the White Earth Nation and other Tribal governments that have been insisting that responsible environmental review must be conducted. The DOC instead produced an inadequate environmental study that the Minnesota Court of Appeals determined was violative of state law. The Court of Appeals directed the PUC to complete a meaningful EIS before any decision on the need for the projects or the route of the pipelines is considered. At this point, with public trust in the process so

deeply compromised it is doubtful that any environmental review conducted by the DOC will have the confidence of the public and the Tribal governments.

As the first Minnesotans who maintain treaty-protected rights both on-Reservation and on ceded territories; as well as being the original stewards of this land predating the existence of the state of Minnesota, the relationship between tribal governments and the State requires special care and expertise. Both the MPCA and MN DNR are subject to Governor Dayton's Executive Order 13-10, which outlines the requirements of tribal consultation between the State and tribal governments and have dedicated staff liaisons, existing relationships and protocols in place. The DOC is exempt from this Executive Order, and it does not have a comparable level of institutional history and capacity to navigate the complex and critical relationships with Minnesota's tribal governments.

For all the above reasons, we believe the RGU must be changed for the Sandpiper and Line 3 projects from the DOC to the MPCA and MN DNR because these agencies have greater expertise in analyzing the potential impacts of the project and protection of the environment; and because they have the experience in working with tribal governments in a respectful manner.

Sincerely,

A handwritten signature in cursive script that reads "Steven Punky Clark". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Steven "Punky" Clark  
Vice-Chairman

**From:** [john cheryl grover](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Comments on Sandpiper and Line 3  
**Date:** Monday, May 02, 2016 2:19:28 PM

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*Dear EQB Board,*

*As a landowner in Clearwater County I feel the need to comment on the request to transfer the EIS for the Sandpiper and Line 3 to the DNR and/or PCA.*

*I truly feel that the Commission has the greatest responsibility for supervising and approving these type of Projects.*

*The Commission has sole authority to determine the need for and routing of these Projects. Under these statutes and rules, the Commission has the responsibility for evaluating a full and broad area of potential effects. To consider the environmental effects, the Commission works with the Department of Commerce to conduct its environmental review.*

*I feel the DNR and PCA have important, yet more limited, resources.*

*The DNR may issue licenses to cross state lands, and PCA may issue any needed air emissions or water appropriation permits for these important Projects.*

*But these agencies do not have authority over the Projects as a whole. Nor are they charged with reviewing the socioeconomic analysis required by the Commission's rules.*

*I do not feel that the DNR nor PCA have conducted any project-wide environmental review for pipelines.*

*But the Commission has the greatest expertise in analyzing the Projects' potential impacts.*

*Because of this I feel that the EIS for the Sandpiper and Line 3 should remain with the Commission as the Governmental Regulatory Unit.*

*Thank you for taking my comments in this very important matter. As a landowner I really would like to see these Pipelines get built in the very near future.*

*Sincerely,*

*John Grover  
Clearwater County Landowner  
Bear Creek Township*

**From:** [Craig Sterle](#)  
**To:** [Seuffert, Will \(MPCA\)](#)  
**Cc:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** Comments on the RGU for Sandpiper/Line 3  
**Date:** Sunday, May 01, 2016 10:28:31 PM  
**Attachments:** [RGU Change letter.docx](#)

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See attached.



May 1<sup>st</sup>, 2016

To: Will Seuffert

From: Craig Sterle

Subject: Change of RGU for the Sandpiper/Line 3 Pipeline Projects

I recently sat in on the EQB Commissioners' meeting to hear arguments for and against the change of RGU (Responsible Government Unit) for these two pipeline projects. In weighing the arguments, and after having participated in the process to this point, I feel a change in the RGU is worthy of thoughtful consideration by the Commissioners. This has never been done before, and agency Commissioners are certainly going to be reluctant to embarrass another agency in such a public way, therefore it could be a very tense discussion. Therefore, let me offer a suggestion that may serve as a compromise.

At a meeting with a handful of EQB members almost two years ago, I commented that I saw DOC in a very difficult position, trying to manage a conflicted mission. They were attempting to serve as both promoter and regulator of the utility, which inadvertently puts employees in a very difficult position. At that time I suggested that DOC, MPCA, and DNR work collaboratively as a team, and that the three agencies should develop a consensus regarding a recommendation on permitting.

I still believe this concept has great merit and ask that it be considered a compromise position. Rather than removing DOC entirely and shifting the RGU to DNR and MPCA, the DOC would remain involved, while incorporating the broader environmental expertise found within the MPCA and DNR, and allowing these two agencies to utilize their superior on-the-ground knowledge during the decision making process. As the agencies responsible for the follow-up permitting, regulator oversight, and emergency spill cleanup and remediation, it makes sense for MPCA and DNR to be given equal voice in the permitting decision.

This recommendation is only slightly different than the agreement that has been drawn up, involving these three agencies. The important difference is that each agency is given an equal voice based on consensus, in the data collection, deliberations, and ultimately in any decision-making. As it stands now, the MPCA and DNR are advisory only, without a regulatory voice in the decision. Requiring the three agencies to reach consensus will ensure that all parties equally share this responsibility.

Craig Sterle  
2676 County Road 104  
Barnum, MN 55707  
218-384-4054  
csterle777@gmail.com

**From:** [Elizabeth Baker-Knuttila](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Comments re: RGU change request  
**Date:** Tuesday, April 19, 2016 11:40:48 PM  
**Attachments:** [EQB Letter April 17.docx](#)

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Please find attached my comments regarding the citizen request for the change of the RGU on the EIS on the proposed Sandpiper and Line 3 pipeline project.

Thank you!

Elizabeth Baker-Knuttila

Sunday, April 17, 2016

Dear Members of the Environmental Quality Board,

**Responding to the Board's request for comments on the citizen proposal requesting change of the RGU, Responsible Governmental Unit, in the case of the court ordered Environmental Impact Statement for the Sandpiper Pipeline Project.** The request was made that the RGU be changed from the DOC to the joint agencies of the MPCA and the MDNR. I wish to submit my thoughts.

What an important time in our state! Over the past year the Governor requested **the creation of 50'** buffer strips to prevent nutrient run off into our water bodies. The first ever Water Summit was held in our State on February 27, 2016 drawing at least 800 attendees and even turning others away. **At the Freshwater Society's State of Water Conference in Alexandria, MN on April 15, just preceding the week of April 18 til 23, 2016 designated as Water Action Week, the Governor called for a Year of Safe Water Action in Minnesota.** I write to you because I take seriously **the Governor's words that, "clean water practices are every Minnesotan's responsibility"**. Running not one but two pipelines through the cleanest Minnesota surface waters is a grave threat to that goal of clean water. Because these pipelines pose such a serious threat to our waters, it is imperative that the court ordered EIS be of the highest scientific rigor, complete and totally inclusive in its scope, and conducted by individuals whose training, credentials, and experience insure the completion of a document that guarantees protection for our waters for our children and grandchildren.

The DOC has never prepared a "full" EIS on a pipeline project, previous environmental reviews of pipelines have simply been CEAs (comparative environmental analysis). The DOC has also never used an outside, independent panel of pipeline impact experts to prepare any environmental review documents, CEA or EIS as is required for this project. Experts in pipeline siting, pipeline risk or failure analysis, impacts of leaks or spills, identification of "frac-outs", the implications of spills of various types of oil (Bakken crude & diluted tar sands oil) in watery environments must be explored by consulting studies done by outside experts and consulting with expert advisors. The National Academy of Sciences

recent study on diluted bitumen offers much caution, scientific study, and should be consulted.

The DOC it would seem, is designated to promote business interests within our state, and not an agency assigned the duties of environmental protection. In the settings that I have participated in, the DOC hardly seems fully impartial. At hearings that I attended the applicant was allowed to exhibit promotional materials, maps, etc. while the citizens in opposition to the location of the proposed routes were denied any opportunity to display materials.

It also would seem that a company that is seeking "permission" in the form of both Certificates of Need and Route Permits should not assume the outcome to the degree that pipe is ordered, procured, and then stored along said "proposed" route, nor should it be allowed to, in advance of the granting of any permitting, be allowed to purchase right of way easements along said "proposed" route. This is an arrogant assumption that what the company desires as the best fit to their plans and profits is best for the state of Minnesota and its resources. The people of our state deserve the best qualified, most experienced, scientifically trained personal to perform that EIS which is ordered to protect the environment of our state.

Please assume the responsibility that is stated in the name of your agency, Environmental Quality Board, and stand for the ideals that name implies, quality protection of our non-renewable natural resources, water being the greatest of those. Assign the Minnesota Department of Natural Resources along with the Minnesota Pollution Control Agency as the Responsible Governmental Units in the preparation of the EIS for the Sandpiper and Line 3 *proposed* pipeline projects. These pipelines, in combination, will carry more oil than the defeated Keystone XL through our Minnesota Lake Country!!!!!! MDNR and MPCA have the credentials, scientific background, expert staff, and experience to accomplish the job with the scientific rigor demanded. *Today's Minnesotans* as well as those of the future deserve no less.

Thank you for soliciting and considering comments offered.

Sincerely,

Elizabeth Baker-Knuttila  
12029 Far Portage Dr.  
Park Rapids, Mn 56470

**From:** [David Ybarra](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Comments RE: RGU Change  
**Date:** Sunday, May 01, 2016 10:57:19 AM

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On behalf of the Minnesota Pipe Trades Association, I submit the following comments regarding the request to change the Responsible Government Unit (RGU) from Minnesota Public Utilities Commission (PUC) to a joint RGU of Minnesota Pollution Control Agency (PCA) and Minnesota Department of Natural Resources (DNR) in the matter of pipeline projects in Minnesota:

The MPUC, along with the Department of Commerce (DOC), have the most experience and greatest expertise in pipeline permitting and environmental review.

Despite the request for the PCA and/or DOC to replace PUC and DOC as the RGU, both agencies filed comments stating that the PUC is the most appropriate agency to administer the environmental review, and should remain the RGU.

The DOC, DNR and PCA signed an agreement (Memo of Understanding) to work together on the environmental review. This allows the PUC to take advantage of each agency's specific expertise and resources.

Based on its agency charter, the PUC provides the broadest, most comprehensive review of any agency by taking into consideration impacts to people and the environment.

Minnesota Pipe Trades support processes that are clearly defined. We value state agencies standing behind those processes and administering them in an efficient, consistent manner, without sacrificing public participation and due process.

Sincerely,

David Ybarra II  
President  
Minnesota Pipe Trades Association

**From:** [Waller Pitts, Haley](#)  
**To:** [\\*EQB Pipelines](#)  
**Cc:** [Brusven, Christina](#)  
**Subject:** Comments regarding EQB Redesignation Request  
**Date:** Monday, May 02, 2016 3:39:04 PM  
**Attachments:** [05\\_02\\_2016 Comments to EQB 58656276\(1\).PDF](#)

---

Mr. Seuffert:

Please accept the attached comments submitted on behalf of North Dakota Pipeline Company LLC and Enbridge Energy, Limited Partnership.

Thank you,

**Haley L. Waller Pitts**  
**Attorney**  
**Fredrikson & Byron, P.A.**  
200 South Sixth Street  
Suite 4000  
Minneapolis, MN 55402.1425

**DIRECT:** 612.492.7443

**ASSISTANT:** 612.492.7641

**FAX:** 612.492.7077

**E-MAIL:** [hwallerpitts@fredlaw.com](mailto:hwallerpitts@fredlaw.com)

**\*\*This is a transmission from the law firm of Fredrikson & Byron, P.A. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (612) 492-7000. The name and biographical data provided above are for informational purposes only and are not intended to be a signature or other indication of an intent by the sender to authenticate the contents of this electronic message.\*\***



Enbridge Energy, Limited  
Partnership  
26 East Superior Street,  
office 408G  
Duluth, MN 55802

May 2, 2016

**VIA EMAIL**

William Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155  
Pipelines.EQB@state.mn.us

Re: Request for a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC's Sandpiper Pipeline Project and Enbridge Energy, Limited Partnership's Line 3 Replacement Pipeline Project

Dear Mr. Seuffert:

North Dakota Pipeline Company LLC ("NDPC") and Enbridge Energy, Limited Partnership ("Enbridge") (collectively, the "Applicants") submit the following comments in response to questions and issues raised during the Environmental Quality Board's ("EQB") April 20, 2016 meeting regarding changing the responsible government unit ("RGU") for environmental review of the Sandpiper Pipeline Project ("Sandpiper") and Line 3 Replacement Project ("L3R") (together, the "Projects") from the Minnesota Public Utilities Commission ("Commission") to the Minnesota Department of Natural Resources ("DNR") and Minnesota Pollution Control Agency ("PCA").

First, at the EQB's meeting, some commenters stated that DNR and/or PCA (as opposed to both) should be the RGU(s) for the Projects. As the Applicants stated in the Applicants' March 25, 2016 correspondence regarding this issue, the Minnesota Public Utilities Commission ("Commission") should remain the RGU for this Project. The Commission is the *only* agency authorized by statute or rule to permit the Projects as a whole.<sup>1</sup> The Projects and their collective merits must be evaluated, respectively, as a whole, and that analysis is the core of appropriately defining and analyzing their purposes, needs, and scope of all impacts. It is also important that the Commission, which has to apply the broad decision criteria in Minn. Stat. § 216B.243, Minn. Stat. Ch. 216G, Minn. R. Ch. 7852 and Minn. R. Ch. 7853 remain the RGU so as to guide the full development of the decision record for these Projects. The Commission has the authority and expertise to do this. By contrast, DNR and PCA have resource-specific roles and stated as such in their comments. DNR and PCA play an important role in reviewing the impacts of the Projects on the natural resources within their purview, but theirs is not a comprehensive review

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<sup>1</sup> See Minn. Stat. § 216B.243, Minn. Stat. Ch. 216G, Minn. R. Ch. 7852 and Minn. R. Ch. 7853.

May 2, 2016

Page 2

of the Projects. The Commission's review of the Projects, however, is comprehensive and must include an analysis of a variety of factors, including state energy needs, reliable energy supplies, environmental impacts, and socioeconomic impacts.<sup>2</sup>

Second, the Applicants have been negotiating easements with landowners on the preferred route since March 2013. In the Applicants' experience, permitting authorities expect that applicants will have worked with landowners in a project's earliest stages. There is no prohibition against negotiating with landowners before environmental review and/or permitting is complete. Engaging early and often with landowners, communities, and other stakeholders along a project's proposed route fosters positive relationships with landowners and ensures that, to the greatest extent practicable, the Projects' proposed routes address landowner concerns and mitigate potential impacts. Here, the Projects' current routes have been improved by landowner input with over 90% of landowners having signed an easement.

Please contact me if you have any further questions.

Sincerely,

*/s/ John Swanson*

John Swanson  
Vice President – US Major Onshore Projects

58603561

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<sup>2</sup> Minn. R. 7853.0130; Minn. R. 7852.1900.



**From:** [Judith Benham](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Concern re Proposed Sandpiper and Line 3 Replacement Route  
**Date:** Monday, April 18, 2016 7:00:21 PM

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I am a property owner on Ten Mile Lake  
Near Hackensack, MN.

The proposed Sandpiper and Line 3 Replacement loud has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint responsible "Governmental Responsibility Unit" made up of the DNR and MPCA.

Judith Benham

[jlbenham@comcast.net](mailto:jlbenham@comcast.net)

Sent from my iPhone

**From:** [Sramthun@charter.net](mailto:Sramthun@charter.net)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Different RGU  
**Date:** Monday, April 04, 2016 8:53:12 AM

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It was a good suggestion to have the PCA and DNR become the responsible government unit for the pipeline project.

Environmental impact is a major concern with the pipeline project so it makes sense to have these groups responsible and involved with oversight.

Thank you for the opportunity to comment. Sue Ramthun, Rochester Mn

**From:** [nanakay@unitelc.com](mailto:nanakay@unitelc.com)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** EIS for Sandpiper and Line 3  
**Date:** Tuesday, April 19, 2016 6:20:18 PM  
**Attachments:** [RUG LEtter.rtf](#)

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April 19, 2016

Dear Environmental Quality Board Members;

RE: Preparation of EIS for Sandpiper and Line 3

I write to provide comment regarding citizen request for EQB to change the current RGU status for the Sandpiper and Line 3 Replacement pipelines. I commend the EQB for gathering additional information on the merits of this request and considering this request. The DOC should be removed as the responsible agency for completion of the EIS for Sandpiper and Line 3.

Of primary concern is an apparent and inherent conflict of interest in consideration of the primary responsibility and role of the Department of Commerce, a government entity charged with promoting commerce in the state. As a citizen participating in public comment in this process, the business promoting role of the DOC is starkly visible and felt. At public meetings, the DOC provides for Enbridge an atmosphere where they can promote their cause, where Enbridge does power point presentations and is provided tables to make literature available. No such venue is allowed for citizen groups who are concerned about environmental effects of the project. Citizens wishing to testify are confronted by a large panel of Enbridge officials which creates an intimidating atmosphere. On top of that, DOC staff at public meetings often posture themselves as providing a supportive atmosphere for Enbridge and often an intimidating and unwelcoming posture toward citizens.

The DOC has never prepared a MEPA compliant EIS, and has relied on comparative environmental analysis for review of pipelines. These studies lean on information from the project proposer and therefore do not give the DOC adequate experience in completing an unbiased environmental review. Again, the DOC mission as an agency is incongruent with the need here to provide a scientific environmental analysis of the need and routing of these pipelines.

The court ruling in the Sandpiper case has exposed a process that provides "clear sailing" path for the corporation seeking to traverse our state with pipelines that put our treasured natural resources at risk and also pose health risks to our citizens. This process has allowed pipeline companies to negotiate and purchase landowner easements along their preferred route. In addition, shockingly, the company is allowed to haul in and stack pipe in holding areas along their preferred route. All of this is allowed long before a certificate of need is granted. This allows the company the ability to create a foregone

conclusion that the pipeline is a "done deal." The company can also come to the table then and "complain and whine" about having this already set up if they were to face being denied a certificate of need. This may pressure decision makers to "give in" and that would be wholly unjust! The company, after all, made an arrogant decision to act as if they already received the certificate of need and route approval before starting these actions. This speaks LOUDLY to flaws in the current process of which the DOC leads.

The DOC has shown throughout the Sandpiper process unwillingness to incorporate excellent analysis from the MPCA and DNR in their evaluations of the proposed Sandpiper corridor. Even an excellent analysis by one of their own staff, Adam Heinen, was largely ignored in their final analysis.

Now is the time to change the process and make it one of integrity. We put at risk our heritage as a state which protects its resources if we do not ensure a process which adheres to MEPA. Please consider and ensure an RGU arrangement which will give the MPCA and the DNR the authority and responsibility for preparation and completion of the EIS, and which would give these agencies the authority to provide analysis and approval of the final EIS for these pipeline projects. These agencies have the environmental and scientific expertise needed for this important endeavor. They should also be supported in bringing in additional experts to assist with the environmental assessments, for example an expert on the the effect of dilbit in a water environment.

Thank you for this opportunity to comment.

Sincerely,

Deanna Johnson

15559 Explorer Circle

Park Rapids, MN 56470

**From:** [ibt42250@aol.com](mailto:ibt42250@aol.com)  
**To:** [\\*EOB\\_Pipelines](#)  
**Subject:** EIS Review Process  
**Date:** Thursday, April 28, 2016 3:29:32 AM

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TO: The Environmental Quality Board

Please be advised the Teamsters National Pipeline Labor Management Cooperation Trust (LMCT) is opposed to the transfer of

authority to the Minnesota Pollution Control Agency (MPCA) and/or Department of Natural Resources (DNR) from the Minnesota

Public Utilities Commission (MPUC) and the Department of Commerce (DOC) as the responsible government entities for pipeline

permitting and review.

The MPUC is best equipped to handle this review process based upon past precedent, past practice and historical experience.

The DOC, MPCA and DNR have previously entered into a Memorandum of Understanding detailing how cooperative efforts will

proceed.

The LMCT believes any attempt to change the Responsible Government Unit is a tactic aimed at delaying and hindering the review

process. This effort by opponents of the Sandpiper Project and other pipeline projects is an attempt to prevent infrastructure

development through delays and inaction.

Richard Stern, Administrator  
Teamsters Pipeline Labor Management Cooperation Trust

**From:** [Daryl Nelson](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Emailing: Enbridge  
**Date:** Thursday, April 28, 2016 5:32:19 PM

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Your message is ready to be sent with the following file or link attachments:

Enbridge

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**From:** [Naomi Hupton](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Enbridge pipeline Big Sandy  
**Date:** Tuesday, April 26, 2016 10:03:23 AM

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To whom it may concern:

As cabin owners on Big Sandy River and conservationists, we have huge concerns about the Enbridge pipeline projects that is proposed to run under the Sandy River between Big Sandy Lake and McGregor, and onward through the Big Sandy Lake subwatershed.

We are concerned about having crude oil and tar sands pipelines in Big Sandy Lake's watershed, concerned about property values, concerned that Big Sandy lake is actually a reservoir, in danger of flooding. We do not want this pipeline in our waterway!!

I also feel that the Minnesota Pollution Control Agency has the expertise to oversee the preparation of a proper, full Environmental Impact Statement, and the Department of Commerce isn't equipped to prepare this, nor do they have the expertise.

Please protect our beautiful lake.

Naomi Hupton  
Volunteer Coordinator  
Neighborhood Network for Seniors  
[www.neighborhoodnetworkforseniors.org](http://www.neighborhoodnetworkforseniors.org)  
651-646-2301 (office)  
612-296-1749 (cell)  
*Volunteers are at the core of what we do!*



**From:** [Russ Bremner](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Environment Protection  
**Date:** Monday, April 18, 2016 5:34:16 PM

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“The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint ‘Responsible Governmental Responsibility Unit’ made up of the DNR and MPCA.”  
Thank You

R Bremner

**From:** [Lori Paris](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Environment review  
**Date:** Thursday, April 28, 2016 2:06:42 PM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)  
[image004.jpg](#)  
[image005.png](#)

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The Bemidji Area Chamber of Commerce believes the statutes clearly state that the responsible government unit for pipeline projects is the Public Utilities Commission, for that reason we are opposed to the request. These changes lead to constant and further delays. The Commission has the greatest responsibility for supervising and approving the Projects.

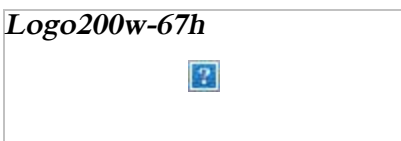
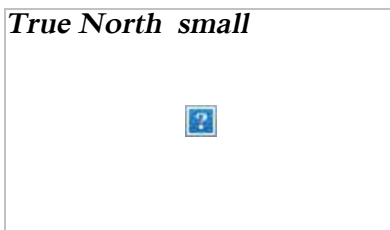
The PCA and DNR also oppose this request and have stated on the record that PUC and Department of Commerce have the most knowledge of pipeline environmental review and siting. DNR/PCA have signed an agreement to work in conjunction with the PUC.

We strongly encourage you to oppose and let this project proceed.



**Lori Paris IOM**  
**President**  
**Bemidji Area Chamber of Commerce**  
[lori@bemidji.org](mailto:lori@bemidji.org)  
[www.bemidji.org](http://www.bemidji.org)

*Mission: To Serve our members and advocate for our business community.*



**From:** [Abby Stickle](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Environmental Impact Statement needed  
**Date:** Wednesday, April 27, 2016 7:15:09 PM

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The proposed Sandpiper and Line [3 Replacement route](#) has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint 'Responsible Governmental Responsibility Unit' made up of the DNR and MPCA.

Sincerely,  
Ten Mile Lake Resident

**From:** [Frank Bibeau](#)  
**To:** [\\*EOB Pipelines](#)  
**Cc:** [westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov); [gogal.Danny@epa.gov](mailto:gogal.Danny@epa.gov); [jensen.stacy@usace.army.mil](mailto:jensen.stacy@usace.army.mil); [Toulou, Tracy \(USAEO\)](#); [Monica Hedstrom](#); [Levi Brown](#); [Susan Klapel](#); [walt\\_ford@fws.gov](mailto:walt_ford@fws.gov); [Baer, William A MVP](#); [Winona Laduke](#)  
**Subject:** EQB Pipeline comments to Change RGU from DOC to DNR and/or PCA  
**Date:** Monday, May 02, 2016 1:17:50 PM  
**Attachments:** [1855 Treaty Authority EQB Pipelines comments 5-2-2016.pdf](#)  
[Exhibit A - EPA Region 5 EIS ltr2 USACE WisDNR n Mn DOC 2-25-2016 DOC date stamp 3-1-2016.pdf](#)  
[Exhibit B - USACE Issue Paper re Trust Responsibilities 9-29-1997 Crandon Mine EIS.pdf](#)  
[Exhibit C - Response From DOS Regarding Enbridge SEIS Border Pipeline Project.pdf](#)  
[Exhibit D - USGS 1996 Hydrological Biochemical Research Shingobee Headwaters.pdf](#)  
[Exhibit E - DOC Notice of Scoping L3R and Sandpiper 4-11-2016.pdf](#)  
[Exhibit F - There Will Be More New Jobs in Solar Than Oil by the End of the Year - Forbes 4-20-2016.pdf](#)

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Good afternoon,

Please find attached comments to support changing the RGU for Sandpiper and Line 3 Replacement to DNR and/orPCA

Sincerely,

Frank Bibeau

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Vice-Chair  
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Percy Benjamin



PO Box 418  
White Earth, MN 56591

## 1855 TREATY AUTHORITY

East Lake ♦ Leech Lake ♦ Mille Lacs ♦ Sandy Lake ♦ White Earth

May 2, 2016

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Re: Comments in response for EQB *to Relieve*  
PUC/DOC as RGU in favor of PCA and/or DNR  
For Sandpiper and Line 3 Replacement pipeline projects

Dear Chairman Fredrickson,

I am writing on behalf of more than 25,000 Chippewa of the Mississippi who enjoy a variety of treaty rights throughout Minnesota, roughly north of I-94, where both proposed pipeline projects are planned to be constructed and Line 3 abandoned, to provide comments *for the EQB to relieve the Minnesota Public Utilities Commission ("Commission") of its current RGU status for the above-entitled projects* and replace it with a joint RGU consisting of the Minnesota Pollution Control Agency ("PCA") and the Minnesota Department of Natural Resources ("DNR"). We understand that Minnesota Rules 4410.0500, Subp. 6 also provides for selection of the RGU for environmental reviews and that *the EQB may designate . . . a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.*

### **MDOC Failure to cooperate and coordinate**

For the past 2 years, the Department of Commerce has ignored repeated important and significant environmental warnings and concerns from various reservation governments and tribal groups, based on our treaty protected rights. I know this

TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified March 3, 1855. | Proclaimed Apr. 7, 1855.

because I have been working with Chippewa band members and reservation governments and representing *Honor the Earth* at the Public Utilities Commission (PUC) for more than 2 years on the Enbridge Sandpiper pipeline project 13-473 and 14-474. Both Sandpiper and Line 3 Replacement project threaten tribal resources and would increase the risk and potential impact of oil spills in the state, presenting serious risks of degradation of water, land, and air-quality. The project applicant's current preferred route would place these risks directly through Minnesota's highest quality water resources, putting our pristine waters, wild rice and the welfare of our wildlife in danger.

The most apparent, negative and public example of DOC disrespect, if not intentional disregard of Tribal rights, environmental justice and concerns was accomplished by the DOC's delayed posting of the EPA Region 5 letter dated February 25, which arrived in the DOC mail room on March 1, 2016. (See Exhibit A), The DOC prevented its publication to the tribal and environmental parties on the edockets for both pipeline projects (Sandpiper and Line 3R), for which the PUC had hearings scheduled on March 24, 2016, (the DOC waited until March 28 to post the EPA letter publicly).

The DOC, Asst. Commissioner Bill Grant and John Wachtler (DOC-EERA) were/are very well aware that White Earth reservation had filed a motion with the PUC to be a *Cooperating Agency* on the EIS in December 2015. Without public knowledge of the EPA letter, the first order of business for the PUC on March 24 was to deny the motion by White Earth reservation, because the PUC had no idea about the EPA Region 5 letter had arrived at DOC nearly a month before.

It is clear that the EPA's understanding from discussions with the MDOC, prior to the Feb. 25, 2016 letter was that

We expect these state EISs and the Corps EA will consider impacts to resources of interest to tribes and that affected tribes will continue to be consulted as these documents are prepared. We also expect that the Corps EA will evaluate and address environmental justice consistent with Executive Order 12,898; we encourage state consideration of environmental justice in their reviews.

The real model for environmental protection of Chippewa usufructuary property has already been developed by the Corps of Engineers with their 1997 *Issue Paper* with regard to Crandon mine and Mole Lake. (See Exhibit B previously filed on Sandpiper edockets). As the *Issue Paper* is now 20

years old and preceded the 1999 *Minnesota v Mille Lacs* Supreme Court decision, it is essential to update and upgrade the *Issue Paper* with regard to the present, proposed pipelines crossing the headwaters of 3 of 4 of the major watersheds of North America.

It is also essential that the Chippewa bands participate in the development of the 2016 revisions to the *Issue Paper* on trust responsibility and protection of natural resources. *Honor the Earth* has previously argued for inclusion of the *Issue Paper* in the DOC environmental analysis, which to date, has been rejected by the DOC and ALJ and ultimately by the PUC in granting the certificate of need for the sandpiper pipeline.

We know that the U.S. State Department is doing a Supplemental EIS (SEIS) with regard to the Clipper pipeline border crossing (See Exhibit C), which should be combined as a part of this Sandpiper and Line 3R EIS as the Clipper pipeline will continue the transport of Canadian tar sands, which the US Department of Defense has already identified as one of the major contributors to climate change, which climate change is a number one priority concern for DOD and national security. Tar sands extreme extraction and fracking practices are at the top of contributing environmental impacts for North America and the United States.

For more information on the EPA website see: <http://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes-guidance-discussing-tribal-treaty> and on: <http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes> .

### **Greater expertise in analyzing the potential impacts of the project**

The DNR and PCA have much *greater expertise in analyzing the potential impacts of the project* in terms of depth and breadth across Minnesota. The DOC does not have the intimate knowledge base of all of the disciplines along the entire corridor like DNR and PCA. DNR and MPCA have relationships and field offices throughout MN and with reservations. DOC is a metro agency focused on accomplishing Enbridge's pipeline goals under MN law.

DOC is just now at the beginning of trying to establish relationships with reservations and tribal members, with only a handful of meetings, after the Appeal of the PUC's grant of Certificate of Need based on DOC's substandard environmental review. DNR and PCA demonstrated their concerns about the

proposed pipeline projects, oil spill history, concerns about water crossings and the overall preferred Enbridge routes in the 384 page EQB exhibit for the April 20 EQB Public Meeting. The PUC and DOC dismissed and undercut repeated warnings by tribal governments, environmental organizations the DNR and PCA. Even after the Minnesota Center for Environmental Advocacy won the Appeal for a full EIS, MCEA was compelled and filed a *Motion to Order the Department of Commerce to Renegotiate the Memorandum of Understanding, and to Establish an Expert Advisory Council under Minn. Stat. § 116D.03*.

In the MCEA Motion's Conclusion, MCEA argues "To [Friends of the Headwater's]'s knowledge, this is the first instance in which a Minnesota agency has conducted an EIS on a pipeline without federal support. It is a difficult task even for an experienced agency, but for an inexperienced agency like the Department [of Commerce], assistance and oversight are critical, especially where it may be relying on the project proposer to the detriment of the EIS. FOH therefore urges the Commission to utilize all resources available to it and the Department, including a revised MOU providing for non-discretionary assistance from DNR and PCA, and the advisory councils of § 116D.03."

Early on DOC ignored important information about the groundwater and groundwater-surface water interactions have been totally ignored, although submitted to DOC and edocket from USGS about the Hydrological and Biogeochemical Research in the Shingobee River Headwaters area, North-Central, Minnesota. (See Exhibit D). The DNR has field hydrologists, hydrogeologists (yes there is a difference in expertise) biologists, fisheries and wildlife managers, and ecologist who know the resource because they live, play and work within their areas; they live in the locale and know the issues intimately.

Groundwater and surface water interchange constantly. A lake or stream can receive groundwater in one location while feeding (recharging) the groundwater in another location of the same source. The ground is where the pipes are to be placed; out of sight, out, of mind. But even a 1% leak can cause a major catastrophe, particularly in glacial outwash plains that dot the proposed alignment.

The Straight River area is particularly susceptible because of the major irrigation wells that pump from 50 to 100 million gallons per day. The attenuation model Enbridge and DOC espouse is not relevant in this type of situation. There are at least 31 high capacity irrigation wells in 1/2 mile of the pipeline alignment in the Straight River basin (we usually consider 1 mile radius) that will completely alter a small leak, mixing it within the water column and distributing the product on the



aquifer materials. Line 3 will contain significant heavy metals such as arsenic, bromide, cadmium, cyanide, lead, mercury, nickel and radium. These toxic chemicals are concentrated under the attenuation model and cannot be treated. They remain in the ground water and surface water environments. Once pipelines are permitted, DOC is no longer concerned with impacts or clean-up.

In terms of actual experience, two (2) recent, major EIS studies that DNR and PCA completed in cooperation with federal agencies are the Red River Storage EIS and the recently completed Copper Nickle EIS in NE MN near the BWCA. To my knowledge, DOC has never done an EIS per the MN Environmental Policy Act let alone EIS of these magnitudes. There are over 300 miles of varying environment through Minnesota alone, with most of the project risk and impacts are routed where wild rice grows.

Important to note for Minnesota and this request to relieve the MDOC as RGU is that the DNR and PCA are generally involved and given notice of every environmental permit application and proposed environmental actions. The DOC is not on that same list of agency notification or involvement because they have limited resources and expertise, much less for pipelines. The DOC does not regulate pipelines or oil, and neither does DNR or PCA. But in the event of an oil spill . . . again . . . DOC will not be called for assessment or clean-up. Only the next pipeline permit application.

The DOC lacks the requisite skills, knowledge and abilities compared to the DNR and PCA, and more important tribal relationships. We have been offended many times by the ignorant approach by DOC and Enbridge regarding public input for the EISs for the proposed pipelines. After 2 years of fighting for an EIS and meaningful public hearings at times convenient for all of Minnesota's affected citizens and property owners, the DOC once again rushes a hearing schedule, which includes some communities across northern Minnesota, to avoid (precede) Fishing Opener the customary start of people returning to affected lakes region. (See Exhibit E).

The DOC *Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings* issued April 11, 2016, has 13 meetings, some scheduled along the Enbridge preferred, new construction corridor from Clearbrook to Park Rapids to Superior, Wisconsin, without public meetings about rebuilding Line 3 pipeline in place or abandonment along the US Highway 2 corridor from Bemidji Minnesota to Superior Wisconsin (approximately 150 miles). (See Exhibit E).

In fact, the word abandonment does not appear in the DOC Notice. Enbridge wants to make more, new, future, inevitable environmental pipeline problems in Minnesota without cleaning up the old one (rebuild Line 3 in place or remove) first, and DOC is helping them with Minnesota law and avoiding replacement or abandonment environmental impacts and issues for the EIS. Both the PCA and DNR have common environmental protection obligations and spill response and clean-up responsibilities, DOC does not.

It is also doubtful that if DNR and PCA were the RGU for the EIS they would actually try to seek the most public comment, from impacted peoples. DOC's prior February public hearings were also well timed for the applicant, just like now. Kids are still in school, or evening babysitters, summer lake people have not returned, Chippewa tribal elections are being held, the Legislature is in Session, resort owners are cleaning up in preparation for summer tourism. On top of that, there has been a lot of public participation, mostly dismissed by the DOC and PUC in edocket proceedings. This feel free to comment and DOC/PUC might hear or listen attitude, makes second a round of supposed public meetings by DOC like the definition of insanity "trying the same thing again, and expecting a different result" or "fool me once shame on you, fool me twice shame on me."

### **No Build Alternative**

The DOC and its Comparative Environmental Assessment, which the PUC relied upon in granting the Certificate of Need was argued as equal to an EIS. Only DOC/PUC and Enbridge championed those incorrect notions and resisted via appeal to the Minnesota Supreme Court. Minnesota's People's deserve a fresh, credible EIS from more experienced agencies to restore lost confidence and trust in the big oil pipeline process. DNR and PCA understand better how to properly evaluate and value our present natural resources in the weighing of social, economic and environmental factors for the benefit/cost/risk analysis.

We need to be ahead of the curve, not behind the curve. We need to recognize that *There Will Be More New Jobs in Solar Than Oil by the End of the Year* according to Forbes<sup>1</sup>. (See Exhibit F). This is the new Social, Economic and Environmental lay of the land and waters in Minnesota.

---

<sup>1</sup> There Will Be More New Jobs in Solar Than Oil by the End of the Year by Jonathan Chew @sochews, April 20, 2016, 10:00 AM EDT, <http://fortune.com/2016/04/20/solar-oil-jobs-indeed/>

In conclusion, DOC has failed and is trying to ride the dead horse.

The tribal wisdom of the Dakota Indians, passed on from generation to generation, says that when you discover that you are riding a dead horse, the best strategy is to dismount.

In modern education and government, however, a whole range of far more advanced strategies are often employed, such as:

1. Buying a stronger whip.
2. Changing riders.
3. Threatening the horse with termination.
4. Appointing a committee to study the horse.
5. Visiting other sites to see how others ride dead horses.
6. Lowering the standards so that dead horses can be included.
7. Re-classifying the dead horse as “living, impaired”.
8. Hiring outside contractors to ride the dead horse.
9. Harnessing several dead horses together to increase the speed.
10. Attempting to mount multiple dead horses in hopes that one of them will spring to life.
11. Providing additional funding and/or training to increase the dead horse’s performance.
12. Doing a productivity study to see if lighter riders would improve the dead horse’s performance.
13. Declaring that as the dead horse does not have to be fed, it is less costly, carries lower overhead, and therefore contributes substantially more to the bottom line of the economy than do some other horses.

14. Re-writing the expected performance requirements for all horses.

15. Promoting the dead horse to a supervisory position.

Respectfully, we ask that the Environmental Quality Board dismount from the DOC horse. DOC's learning curve is very expensive for the rest of us who are not accustomed to defending against big oil revenues with the ability to out wait and outspend small, community and environmentally based organizations, who all already relying on our environment for a more harmonious way of life. For all of the reasons and comments shared, the EQB must change the RGU to the DNR and/or PCA because they *have greater expertise in analyzing the potential impacts of the project.*

Mii gwitch,

*/s/ Frank Bibeau*

Frank Bibeau  
Executive Director

Attachments

Email cc: Ken Westlake, EPA Region 5  
 Danny Gogal, EPA Environmental Justice  
 Stacy Jensen, Acting Chief, Regulatory Branch USACE St. Paul  
 Tracy Toulou, Office of Tribal Justice, DOJ  
 Monica Hedstrom, Director Resource Mgmt, White Earth Reservation  
 Levi Brown, Environmental Services, Leech Lake Reservation  
 Susan Klapel, Director, Natural Resources, Mille Lacs Reservation  
 Walt Ford, USFWS Midwest Tribal Liaison, Rice Lake Refuge  
 William Baer, USACE, Bemidji  
 Winona LaDuke, Executive Director, Honor the Earth

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Percy Benjamin



PO Box 418  
White Earth, MN 56591

## 1855 TREATY AUTHORITY

East Lake ♦ Leech Lake ♦ Mille Lacs ♦ Sandy Lake ♦ White Earth

May 2, 2016

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Re: Comments in response for EQB *to Relieve*  
PUC/DOC as RGU in favor of PCA and/or DNR  
For Sandpiper and Line 3 Replacement pipeline projects

Dear Chairman Fredrickson,

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### **MDOC Failure to cooperate and coordinate**

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TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified March 3, 1855. | Proclaimed Apr. 7, 1855.

because I have been working with Chippewa band members and reservation governments and representing *Honor the Earth* at the Public Utilities Commission (PUC) for more than 2 years on the Enbridge Sandpiper pipeline project 13-473 and 14-474. Both Sandpiper and Line 3 Replacement project threaten tribal resources and would increase the risk and potential impact of oil spills in the state, presenting serious risks of degradation of water, land, and air-quality. The project applicant's current preferred route would place these risks directly through Minnesota's highest quality water resources, putting our pristine waters, wild rice and the welfare of our wildlife in danger.

The most apparent, negative and public example of DOC disrespect, if not intentional disregard of Tribal rights, environmental justice and concerns was accomplished by the DOC's delayed posting of the EPA Region 5 letter dated February 25, which arrived in the DOC mail room on March 1, 2016. (See Exhibit A), The DOC prevented its publication to the tribal and environmental parties on the edockets for both pipeline projects (Sandpiper and Line 3R), for which the PUC had hearings scheduled on March 24, 2016, (the DOC waited until March 28 to post the EPA letter publicly).

The DOC, Asst. Commissioner Bill Grant and John Wachtler (DOC-EERA) were/are very well aware that White Earth reservation had filed a motion with the PUC to be a *Cooperating Agency* on the EIS in December 2015. Without public knowledge of the EPA letter, the first order of business for the PUC on March 24 was to deny the motion by White Earth reservation, because the PUC had no idea about the EPA Region 5 letter had arrived at DOC nearly a month before.

It is clear that the EPA's understanding from discussions with the MDOC, prior to the Feb. 25, 2016 letter was that

We expect these state EISs and the Corps EA will consider impacts to resources of interest to tribes and that affected tribes will continue to be consulted as these documents are prepared. We also expect that the Corps EA will evaluate and address environmental justice consistent with Executive Order 12,898; we encourage state consideration of environmental justice in their reviews.

The real model for environmental protection of Chippewa usufructuary property has already been developed by the Corps of Engineers with their 1997 *Issue Paper* with regard to Crandon mine and Mole Lake. (See Exhibit B previously filed on Sandpiper edockets). As the *Issue Paper* is now 20

years old and preceded the 1999 *Minnesota v Mille Lacs* Supreme Court decision, it is essential to update and upgrade the *Issue Paper* with regard to the present, proposed pipelines crossing the headwaters of 3 of 4 of the major watersheds of North America.

It is also essential that the Chippewa bands participate in the development of the 2016 revisions to the *Issue Paper* on trust responsibility and protection of natural resources. *Honor the Earth* has previously argued for inclusion of the *Issue Paper* in the DOC environmental analysis, which to date, has been rejected by the DOC and ALJ and ultimately by the PUC in granting the certificate of need for the sandpiper pipeline.

We know that the U.S. State Department is doing a Supplemental EIS (SEIS) with regard to the Clipper pipeline border crossing (See Exhibit C), which should be combined as a part of this Sandpiper and Line 3R EIS as the Clipper pipeline will continue the transport of Canadian tar sands, which the US Department of Defense has already identified as one of the major contributors to climate change, which climate change is a number one priority concern for DOD and national security. Tar sands extreme extraction and fracking practices are at the top of contributing environmental impacts for North America and the United States.

For more information on the EPA website see: <http://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes-guidance-discussing-tribal-treaty> and on: <http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes> .

### **Greater expertise in analyzing the potential impacts of the project**

The DNR and PCA have much *greater expertise in analyzing the potential impacts of the project* in terms of depth and breadth across Minnesota. The DOC does not have the intimate knowledge base of all of the disciplines along the entire corridor like DNR and PCA. DNR and MPCA have relationships and field offices throughout MN and with reservations. DOC is a metro agency focused on accomplishing Enbridge's pipeline goals under MN law.

DOC is just now at the beginning of trying to establish relationships with reservations and tribal members, with only a handful of meetings, after the Appeal of the PUC's grant of Certificate of Need based on DOC's substandard environmental review. DNR and PCA demonstrated their concerns about the

proposed pipeline projects, oil spill history, concerns about water crossings and the overall preferred Enbridge routes in the 384 page EQB exhibit for the April 20 EQB Public Meeting. The PUC and DOC dismissed and undercut repeated warnings by tribal governments, environmental organizations the DNR and PCA. Even after the Minnesota Center for Environmental Advocacy won the Appeal for a full EIS, MCEA was compelled and filed a *Motion to Order the Department of Commerce to Renegotiate the Memorandum of Understanding, and to Establish an Expert Advisory Council under Minn. Stat. § 116D.03*.

In the MCEA Motion's Conclusion, MCEA argues "To [Friends of the Headwater's]'s knowledge, this is the first instance in which a Minnesota agency has conducted an EIS on a pipeline without federal support. It is a difficult task even for an experienced agency, but for an inexperienced agency like the Department [of Commerce], assistance and oversight are critical, especially where it may be relying on the project proposer to the detriment of the EIS. FOH therefore urges the Commission to utilize all resources available to it and the Department, including a revised MOU providing for non-discretionary assistance from DNR and PCA, and the advisory councils of § 116D.03."

Early on DOC ignored important information about the groundwater and groundwater-surface water interactions have been totally ignored, although submitted to DOC and edocket from USGS about the Hydrological and Biogeochemical Research in the Shingobee River Headwaters area, North-Central, Minnesota. (See Exhibit D). The DNR has field hydrologists, hydrogeologists (yes there is a difference in expertise) biologists, fisheries and wildlife managers, and ecologist who know the resource because they live, play and work within their areas; they live in the locale and know the issues intimately.

Groundwater and surface water interchange constantly. A lake or stream can receive groundwater in one location while feeding (recharging) the groundwater in another location of the same source. The ground is where the pipes are to be placed; out of sight, out, of mind. But even a 1% leak can cause a major catastrophe, particularly in glacial outwash plains that dot the proposed alignment.

The Straight River area is particularly susceptible because of the major irrigation wells that pump from 50 to 100 million gallons per day. The attenuation model Enbridge and DOC espouse is not relevant in this type of situation. There are at least 31 high capacity irrigation wells in 1/2 mile of the pipeline alignment in the Straight River basin (we usually consider 1 mile radius) that will completely alter a small leak, mixing it within the water column and distributing the product on the



aquifer materials. Line 3 will contain significant heavy metals such as arsenic, bromide, cadmium, cyanide, lead, mercury, nickel and radium. These toxic chemicals are concentrated under the attenuation model and cannot be treated. They remain in the ground water and surface water environments. Once pipelines are permitted, DOC is no longer concerned with impacts or clean-up.

In terms of actual experience, two (2) recent, major EIS studies that DNR and PCA completed in cooperation with federal agencies are the Red River Storage EIS and the recently completed Copper Nickle EIS in NE MN near the BWCA. To my knowledge, DOC has never done an EIS per the MN Environmental Policy Act let alone and EIS of these magnitudes. There are over 300 miles of varying environment through Minnesota alone, with most of the project risk and impacts are routed where wild rice grows.

Important to note for Minnesota and this request to relieve the MDOC as RGU is that the DNR and PCA are generally involved and given notice of every environmental permit application and proposed environmental actions. The DOC is not on that same list of agency notification or involvement because they have limited resources and expertise, much less for pipelines. The DOC does not regulate pipelines or oil, and neither does DNR or PCA. But in the event of an oil spill . . . again . . . DOC will not be called for assessment or clean-up. Only the next pipeline permit application.

The DOC lacks the requisite skills, knowledge and abilities compared to the DNR and PCA, and more important tribal relationships. We have been offended many times by the ignorant approach by DOC and Enbridge regarding public input for the EISs for the proposed pipelines. After 2 years of fighting for an EIS and meaningful public hearings at times convenient for all of Minnesota's affected citizens and property owners, the DOC once again rushes a hearing schedule, which includes some communities across northern Minnesota, to avoid (precede) Fishing Opener the customary start of people returning to affected lakes region. (See Exhibit E).

The DOC *Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings* issued April 11, 2016, has 13 meetings, some scheduled along the Enbridge preferred, new construction corridor from Clearbrook to Park Rapids to Superior, Wisconsin, without public meetings about rebuilding Line 3 pipeline in place or abandonment along the US Highway 2 corridor from Bemidji Minnesota to Superior Wisconsin (approximately 150 miles). (See Exhibit E).

In fact, the word abandonment does not appear in the DOC Notice. Enbridge wants to make more, new, future, inevitable environmental pipeline problems in Minnesota without cleaning up the old one (rebuild Line 3 in place or remove) first, and DOC is helping them with Minnesota law and avoiding replacement or abandonment environmental impacts and issues for the EIS. Both the PCA and DNR have common environmental protection obligations and spill response and clean-up responsibilities, DOC does not.

It is also doubtful that if DNR and PCA were the RGU for the EIS they would actually try to seek the most public comment, from impacted peoples. DOC's prior February public hearings were also well timed for the applicant, just like now. Kids are still in school, or evening babysitters, summer lake people have not returned, Chippewa tribal elections are being held, the Legislature is in Session, resort owners are cleaning up in preparation for summer tourism. On top of that, there has been a lot of public participation, mostly dismissed by the DOC and PUC in edocket proceedings. This feel free to comment and DOC/PUC might hear or listen attitude, makes second a round of supposed public meetings by DOC like the definition of insanity "trying the same thing again, and expecting a different result" or "fool me once shame on you, fool me twice shame on me."

### **No Build Alternative**

The DOC and its Comparative Environmental Assessment, which the PUC relied upon in granting the Certificate of Need was argued as equal to an EIS. Only DOC/PUC and Enbridge championed those incorrect notions and resisted via appeal to the Minnesota Supreme Court. Minnesota's People's deserve a fresh, credible EIS from more experienced agencies to restore lost confidence and trust in the big oil pipeline process. DNR and PCA understand better how to properly evaluate and value our present natural resources in the weighing of social, economic and environmental factors for the benefit/cost/risk analysis.

We need to be ahead of the curve, not behind the curve. We need to recognize that *There Will Be More New Jobs in Solar Than Oil by the End of the Year* according to Forbes<sup>1</sup>. (See Exhibit F). This is the new Social, Economic and Environmental lay of the land and waters in Minnesota.

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<sup>1</sup> There Will Be More New Jobs in Solar Than Oil by the End of the Year by Jonathan Chew @sochews, April 20, 2016, 10:00 AM EDT, <http://fortune.com/2016/04/20/solar-oil-jobs-indeed/>

In conclusion, DOC has failed and is trying to ride the dead horse.

The tribal wisdom of the Dakota Indians, passed on from generation to generation, says that when you discover that you are riding a dead horse, the best strategy is to dismount.

In modern education and government, however, a whole range of far more advanced strategies are often employed, such as:

1. Buying a stronger whip.
2. Changing riders.
3. Threatening the horse with termination.
4. Appointing a committee to study the horse.
5. Visiting other sites to see how others ride dead horses.
6. Lowering the standards so that dead horses can be included.
7. Re-classifying the dead horse as “living, impaired”.
8. Hiring outside contractors to ride the dead horse.
9. Harnessing several dead horses together to increase the speed.
10. Attempting to mount multiple dead horses in hopes that one of them will spring to life.
11. Providing additional funding and/or training to increase the dead horse’s performance.
12. Doing a productivity study to see if lighter riders would improve the dead horse’s performance.
13. Declaring that as the dead horse does not have to be fed, it is less costly, carries lower overhead, and therefore contributes substantially more to the bottom line of the economy than do some other horses.

14. Re-writing the expected performance requirements for all horses.

15. Promoting the dead horse to a supervisory position.

Respectfully, we ask that the Environmental Quality Board dismount from the DOC horse. DOC's learning curve is very expensive for the rest of us who are not accustomed to defending against big oil revenues with the ability to out wait and outspend small, community and environmentally based organizations, who all already relying on our environment for a more harmonious way of life. For all of the reasons and comments shared, the EQB must change the RGU to the DNR and/or PCA because they *have greater expertise in analyzing the potential impacts of the project.*

Mii gwitch,

*/s/ Frank Bibeau*

Frank Bibeau  
Executive Director

Attachments

Email cc: Ken Westlake, EPA Region 5  
 Danny Gogal, EPA Environmental Justice  
 Stacy Jensen, Acting Chief, Regulatory Branch USACE St. Paul  
 Tracy Toulou, Office of Tribal Justice, DOJ  
 Monica Hedstrom, Director Resource Mgmt, White Earth Reservation  
 Levi Brown, Environmental Services, Leech Lake Reservation  
 Susan Klapel, Director, Natural Resources, Mille Lacs Reservation  
 Walt Ford, USFWS Midwest Tribal Liaison, Rice Lake Refuge  
 William Baer, USACE, Bemidji  
 Winona LaDuke, Executive Director, Honor the Earth



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5  
 77 WEST JACKSON BOULEVARD  
 CHICAGO, IL 60604-3590

FEB 25 2016

REPLY TO THE ATTENTION OF:

Stacey Jensen  
 Acting Chief, Regulatory Branch  
 St. Paul District  
 U.S. Army Corps of Engineers  
 180 Fifth Street East, Suite 700  
 St. Paul, Minnesota 55101



John Wachtler  
 Energy Environmental Review and Analysis Unit  
 Minnesota Department of Commerce  
 85 Seventh Place East, Suite 500  
 St. Paul, Minnesota 55101

Jim Pardee  
 Wisconsin Environmental Policy Act Coordinator  
 Bureau of Environmental Analysis and Sustainability  
 Wisconsin Department of Natural Resources  
 101 South Webster Street  
 P.O. Box 7921  
 Madison, Wisconsin 53707

RE: Environmental impact reviews of proposed Enbridge Line 3 Replacement Pipeline and proposed Sandpiper Pipeline

Dear Ms. Jensen, Mr. Wachtler, and Mr. Pardee:

As you know, the Enbridge Company has proposed installing a new crude oil pipeline to replace its existing Line 3 Pipeline, following the existing Line 3 route from Hardisty Alberta, Canada to Clearbrook, Minnesota and co-located with a portion of the proposed Sandpiper Pipeline from Clearbrook to Superior. The proposed Sandpiper Pipeline would carry Williston Basin crude oil from Tioga, North Dakota, to the Enbridge Terminal in Superior via Clearbrook. Routing for the Sandpiper Pipeline in North Dakota has already been approved by the North Dakota Public Service Commission.

Several tribal governments and environmental organizations have called on the U.S. Army Corps of Engineers (Corps) and the affected states to undertake a joint Federal-State Environmental

Impact Statement (EIS) on the Sandpiper project. EPA has discussed the review process with your agencies in light of these requests, and the purpose of this letter is to state our understanding and expectations based on these discussions.

We understand that decisions on certificate of need and routing in Minnesota rest with the Minnesota Public Utility Commission, to be informed by a State EIS being undertaken by Minnesota Department of Commerce (MDOC). The Minnesota State EIS will consider: 1) multiple route alternatives; 2) impacts to a wide range of resources in the natural and human environment, including resources of interest to tribes; and 3) spill modeling at multiple proposed stream crossing locations. We understand that MDOC will consult with affected tribes during the development of the State EIS.

The Wisconsin Department of Natural Resources (WDNR) is preparing a State EIS to inform permit decisions that will determine the route. We understand that this EIS will also cover a broad range of potential impacts to resources in the natural and human environment, and that WDNR will engage with affected tribes in Wisconsin.

We also understand that the Corps intends to prepare an environmental assessment (EA) that will focus on impacts to jurisdictional Waters of the United States (WOUS) and will inform its permit decision under Section 404 of the Clean Water Act. The Corps will prepare this EA once Minnesota and Wisconsin have made routing decisions; will consider the analyses from the State EISs as part of its review; and is already coordinating with MDOC and WDNR. We understand that the Corps has initiated contact with several Chippewa bands near the Sandpiper project, and is also reaching out to additional tribes with historic ties to the area in compliance with the National Historic Preservation Act. We expect that the Corps will continue to engage with tribes on a government-to-government basis, consulting with them as the NEPA process moves forward, to ensure that tribal interests including treaty rights in ceded territory are fully considered. The Corps is also coordinating with the U.S. Fish and Wildlife Service to assure compliance with the Endangered Species Act. The Corps has indicated that, if the information and analysis in its EA leads to a determination that Enbridge's proposed activities in WOUS warrant preparation of a Federal EIS, it will prepare an EIS before its permit decision.

EPA has reviewed the scopes of the state EISs under development respectively by MDOC and WDNR and believes they will address the relevant issues. We expect these state EISs and the Corps EA will consider impacts to resources of interest to tribes and that the affected tribes will continue to be consulted as these documents are prepared. We also expect that the Corps EA will evaluate and address environmental justice consistent with Executive Order 12,898; we encourage state consideration of environmental justice in their reviews.

EPA will review and comment on the MDOC and WDNR state EISs when they are issued for public comment. We will also review and comment on the Corps EA. Please provide these documents to Ken Westlake of my staff when they are available. At this time we are not advising the Corps, MDOC, and WDNR to prepare a joint Federal/state EIS. We will continue to monitor the situation and coordinate, as appropriate, with the Corps, the states, and tribes on permits related to this project within EPA's legal responsibilities.

If you have questions or comments, please contact me or Ken Westlake of my staff at 312-886-2910 and westlake.kenneth@epa.gov.

Sincerely,



Alan Walts, Director  
Office of Enforcement and Compliance Assurance

Cc:

Melanie Benjamin, Chief Executive Officer  
Mille Lacs Band of Minnesota Chippewa  
Mille Lacs Government Center  
43408 Oodena Drive  
Onamia, Minnesota 56359

Erma Vizenor, Chairwoman  
White Earth Band of Minnesota Chippewa  
24246 Crane Road  
White Earth, Minnesota 56591

Carri Jones, Chairwoman  
Leech Lake Band of Minnesota Chippewa  
190 Salistar Drive, NW  
Cass Lake, Minnesota 56633

Wally Dupuis, Chairman  
Fond du Lac Band of Minnesota Chippewa  
1720 Big Lake Road  
Cloquet, Minnesota 55720

SEP 29 1997

Construction-Operations  
Regulatory (94-01298-IP-DLB)

Mr. James Schlender  
Executive Administrator  
Great Lakes Indian Fish & Wildlife Commission  
P.O. Box 9  
Odanah, Wisconsin 54861

Dear Mr. Schlender:

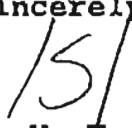
As a result of issues that have arisen during our evaluation of a permit application by Crandon Mining Company to establish a mining operation near Crandon, Wisconsin, the St. Paul District has been asked by several Native American tribes to address the nature and extent of the Corps trust responsibilities toward Indian tribes in the Corps regulatory permitting process. I have indicated at past consultation meetings that I had requested guidance from Corps Headquarters to address this question.

Enclosed is an issue paper that provides the guidelines that the District will follow to insure that it fulfills its trust obligations. This paper, while very useful for illustrative purposes, may not resolve issues that are specific to any individual treaty or pending permit action.

I propose that we hold a consultation meeting in approximately 60 days. This will provide you time to review the paper and to develop any questions or concerns that you may have regarding these guidelines, as well as to how they will be applied in our review of the Crandon Mining Company permit application. I suggest that the consultation meeting be held in early December in Eau Claire, Wisconsin. Mr. Dave Ballman, of my staff, will coordinate with your staff in scheduling the meeting.

Please contact me at (612) 290-5300 if you have any questions.

Sincerely,

  
J. M. Wonsik  
Colonel, Corps of Engineers  
District Engineer

SCANNED



## Identical Letters:

Arlyn Ackley, Sokaogon Chippewa Community  
 Philip Shopodock, Forest County Potawatomi Community  
 Apesanahkwat, Menominee Indian Tribe of Wisconsin  
 James Schlender, Great Lakes Indian Fish & Wildlife Commission

Ballman	CO-R	DB 9/17
Ahlness	CO-R	10 9/18/97
Hauger	CO-R	th
Wopat	CO-R	BW 245497
Haumersen	CO	H
Adamski	OC	SPB
Crump	PP-PM	TC
Breyfogle	DDE	69/28

**ISSUE PAPER  
AND  
DISTRICT RECOMMENDATION**

**THE AGENCY'S TRUST RESPONSIBILITIES TOWARD  
INDIAN TRIBES IN THE REGULATORY PERMITTING PROCESS**

1. **ISSUE.** Work activities performed pursuant to permits issued under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act have the potential to impact Indian treaty rights<sup>1</sup> and to impact resources owned or used by Indian Tribes. Because of this, questions have arisen about the Corps' trust obligations to Indian tribes with respect to the Corps' permitting processes. This paper shall attempt to delineate trust issues related to the permitting process and will attempt to set forth guidelines with respect to those issues<sup>2</sup>. A question and answer format will be used to accomplish this purpose.

2. **May the Corps issue a permit that will impinge on or abrogate treaty rights?**

No, treaty rights<sup>3</sup>, absent consent of Congress, may not be impinged or abrogated<sup>4</sup>. As the

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<sup>1</sup>The term "treaty rights", as used in this paper, includes not only rights derived from treaties, per se, but also rights derived from federal statutes, agreements executive orders and the like. The terms "Tribal resources" or "Treaty resources", as used in this paper, refers to resources that the Tribe, pursuant to a treaty, has a right to exploit and includes resources that they own and resources that they have a right to gather. The term "trust resources" refers to resources held in trust by the United States (the title is held by the United States) for the benefit of the Tribe.

<sup>2</sup>The paper, other than as may be useful for illustrative purposes, will not attempt to resolve issues that are specific to any individual treaty or pending permit action, but will attempt to formulate guidelines which will insure that the agency fulfils all of its trust obligations.

<sup>3</sup>It should be noted that the terms "treaty rights" and "treaty resources" are not synonymous. For example, a treaty that guarantees a tribe the right to hunt and fish on its reservation, the "treaty right" is the right to take the resource (game or fish), the "treaty resource"

Court held in Northwest Sea Farms, Inc. v. U.S. Army Corps of Engineers, 931 F. Supp. 1555 (W.D. Wash. 1996) 1519-1520:

The Supreme Court has recognized "the undisputed existence of a general trust relationship between the United States and the Indian people." United States v. Mitchell, 463 U.S. 206, 225, 103 S.Ct. 2961, 2972, 77 L.Ed.2d 580 (1983). This obligation has been interpreted to impose a fiduciary duty owed in conducting "any Federal Government action"<sup>3</sup> which relates to Indian Tribes. Nance v. Environmental Protection Agency, 645 F.2d 701, 711 (9th Cir.), cert. Denied, 454 U.S. 1081, 102 S.Ct. 635, 70 L.Ed.2d 615 (1981), ... In previous cases, this Court has tacitly recognized that the duty extends to the Corps in the exercise of its permit decisions. See e.g. Muckleshoot Indian Tribe v. Hall, 698 F. Supp. 1504, 1523 (W.D.Wash.1988) (granting an injunction against the construction of a marina in consideration of the effect upon Indian treaty rights).

In carrying out its fiduciary duty, it is the government's and subsequently the Corps', responsibility to ensure that Indian treaty rights are given full effect. See e.g. Seminole Nation v. United States, 316 U.S. 286, 296-297, 62 S. Ct. 1049, 1054-55, 86 L.Ed. 1480, 86 L.Ed.1777 (1942) (finding that the United States owes the highest fiduciary duty to protect Indian contract rights as embodied by treaties). Indeed, it is well established that only Congress has the authority to modify or abrogate the terms of Indian treaties. United States v. Eberhardt, 789 F.2d 1354, 1361 (9th Cir.1986). As such, the Court concludes that the Corps owes a fiduciary duty to ensure that the Lummi Nation's treaty rights are not abrogated or impinged upon absent an act of Congress.

### 3. How are treaty rights determined?

Treaty rights are determined on a case by case (treaty by treaty) basis. Each individual treaty or series of treaties must be examined to determine the specific rights provided by those treaties.

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is the game or fish. Although courts have, almost universally held that treaty rights may not be impinged, they have not held that the resource may not be negatively impacted. See also question 6.

<sup>3</sup>Note, however, that the same Court that decided Northwest Sea Farms, Inc. issued an order in Lummi Indian Nation v. Cunningham, case No. C92-1023C on September 1, 1992, to the effect that before a claim that treaty rights have been impinged or abrogated is cognizable "the interference with the treaty right must reach a level of legal significance".

<sup>3</sup>A permit is a Federal Government action"

#### 4. How are Indian treaties to be interpreted?

There are three basic rules of treaty construction. They are: (1) Ambiguities in treaties must be resolved in favor of the Indians, (2) Indian treaties must be interpreted as the Indians would have understood them at the time they consented to the treaty, and (3) Indian treaties must be construed liberally in favor of the Indians. This does not mean, however, that the treaties are to be construed in any manner that the Indians wish them to be construed. The rules of construction do not permit the clear intent of the treaties to be disregarded.

The Court in *Menominee Indian Tribe of Wisconsin v. Thompson*, 922 F.Supp. 184, (198-199), (W.D. Wis. 1996) described the rules of construction as follows:

It is well known that Indian treaties must be interpreted as the Indians understood them, that doubtful expressions are to be resolved in favor of the Indians and that treaties must be construed liberally in favor of the signatory tribes. ... treaties are not to be construed by "the technical meaning of [their] words to learned lawyers, but in the sense in which they would naturally be understood by the Indians." *Id.*

Determining the Indians' understanding may require expert testimony to explain the historical and cultural context in which the Indians viewed the treaty provisions. *See, e.g. McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 174, 93 S.Ct. 1257, 1263, 36 L.Ed.2d 129 (1973) ... ("Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith."); *Winters v. United States*, 207 U.S. 564, 576-77, 28 S.Ct. 207, 211, 52 L.Ed. 340 (1908) ("ambiguities occurring [in treaties] will be resolved from the standpoint of the Indians").

It is true that "[t]he canon of construction regarding the resolution of ambiguities ... does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress." *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 506, 106 S.Ct. 2039, 2044, 90 L.Ed.2d 490 (1986). *See also Amoco Production Co. V. Gambell*, 480 U.S. 531, 555, 107 S.Ct. 1396, 1409, 94 L.Ed.2d 542 (1987) (citing *Catawba Indian Tribe*); *Choctaw Nation*, 318 U.S. at 432, 63 S.Ct. At 678 ("even Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties").

Moreover, many of the issues of treaty construction that are likely to arise in the permitting process, have already been determined by the Courts<sup>6</sup>. Thus, the first step in

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<sup>6</sup>Even if the case law is not dispositive of the specific issue, it may provide rationale or additional information which will aid in the decision process. Additionally, it is recommend that Office of Counsel (or similar resource) be consulted before making a determination, in questionable cases, whether a treaty right exists or does not exist and whether the proposed

construing a treaty should be to review any Court decision that may be relevant.

**5. How can we determine if treaty rights may be an issue with respect to a specific permit application?**

The geographic extent<sup>7</sup> of all treaty rights and Tribal resources should be known to the regulatory staff. If the proposed activity could have any effect within that geographic area the treaties should be reviewed to determine if treaty rights may be affected. A determination should also be made as to whether the proposed activity may affect Tribal resources. Most importantly, the Indian Tribes that may be affected by the permitted activity should be apprised of the permit application and be given the opportunity to comment or consult with the Corps. If any Tribe asserts that the proposed permit activity would impinge on or abrogate its treaty rights or would negatively impact its resources, it should be requested<sup>8</sup> to provide all substantiating information it has available as to: (1) the existence of treaties, (2) claimed treaty rights, (3) any Court cases relevant to the Tribe's assertions, (4) an explanation of how the proposed activity would violate treaty rights, (5) identification of any Tribal resources that may be impacted, (6) an explanation of how the proposed activity would impact Tribal resources, and (7) a description of how the proposed activity would impact the Tribe<sup>9</sup>. BIA should also be informed of any proposed activity (needing a Corps permit) that might impact Tribal resources and should be requested to identify any treaty rights or Tribal resources that may be impacted by the proposed permit.

**6. Does the Corps have a trust responsibility to protect Tribal resources from environmental degradation that may result from the proposed permit activity?**

The Corps must consider the effect that the activity needing a Corps permit would have on the Tribe's resources, however, the fact that the Tribe's resource may be degraded, or reduced in value or utility, does not necessarily compel denial of the permit. This principle was explained by the Court in Nez Perce Tribe v Idaho Power Co., 847 F.Supp. 791 807-813 (D.Idaho 1994) in a

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permit will or will not violate those rights.

<sup>7</sup>Including the area within the external boundaries of any Indian reservation and the geographic area in which usufructuary rights, if any, may be exercised.

<sup>8</sup>The Tribes are not required to respond.

<sup>9</sup>This request would be made to afford the Tribes every practicable opportunity to present their views. Neither the failure of the Tribes to respond nor a response from the Tribes relieves the Corps of its obligation to consider all impacts the proposed activity would have on any treaty rights or any impacts to Tribal resources that Corps is aware of, or reasonably should have been aware of. See also Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995).

case concerning permanent usufructuary rights<sup>10</sup>, as follows:

... In other words, the Tribe argues that developments such as dams which damage, reduce or destroy the fish runs violate their 1855 Stevens treaty fishing rights and entitles them to an award of monetary damages.

**b) Treaty Rights to Preservation of Fish Runs**

The ultimate issue presented is whether the treaty provides the Tribe with an absolute right to preservation of the fish runs in the condition existing in 1855, free from environmental damage caused by a changing and developing society. Only if such a right exists is the Tribe entitled to an award of monetary damages.

The parties have cited, and the Court's own independent research has disclosed only three cases which directly address this ultimate issue. United States v. Washington (hereinafter "Washington 1982"), 694 F.2d 1374 (9th Cir. 1982); Muckleshoot Tribe v Puget Sound Power and Light, CV No. 472-72C2V (W.D. Wash. 1986); and Nisqually Tribe v. City of Centralia, No. C75-31 (W.D. Wash. 1981). However, Washington 1982 was vacated by the Ninth Circuit on other grounds in a subsequent en banc decision. United States v. Washington, 759 F.2d 1353 (9th Cir. 1985). Muckleshoot Tribe v. Puget Sound expressly relied on the Washington 1982 opinion which was not vacated until after the decision in Muckleshoot was issued. Therefore, it appears that this Court is required to address and determine an issue of first impression without the benefit of any binding guidance and direction. ...

... State regulation cannot discriminate against the Indian fishery. Puyallup II, 414 U.S. [44] at 48, 94 S.Ct. [330] at 333 [38 L.Ed.2d 254 [(1973)]. This principle is broad enough to encompass discriminatory granting of permits for projects with potentially adverse environmental effects.

Id. At 1382.

In addition, the Ninth Circuit rejected the trial court's conclusion that other previous cases implied a general right to environmental protection of the fish: ...

Thus, according to the Ninth Circuit's persuasive reasoning in Washington 1982, the states may allow or even authorize development which reduces the number of fish in the annual runs as long as such action does not discriminate against treaty fishermen in determining what development will be authorized. Although the opinion was vacated on other grounds, the Court agrees with the

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<sup>10</sup>The treaty at issue in the case has been interpreted as creating permanent usufructuary rights (non-exclusive) to fish in all of the Tribes usual and customary places. Not all usufructuary rights are permanent as some are subject to termination upon the occurrence of a defined event. For example, Chippewa usufructuary rights with respect to territory ceded by them to the United States are terminated or extinguished whenever the land is owned by private entities rather than the public. The (trust) duty to mitigate for damage to resources that may be harvestable pursuant to permanent usufructuary rights discussed by the Court in Nez Perce may not be applicable to usufructuary rights that can be terminated or extinguished in their entirety.

legal analysis in *Washington 1982*. In the Court's view, the Stevens treaties do not protect the Indians from degradation of the fish runs caused by development which is not part of a pattern of discrimination against Indian treaty fish runs.

... In the Court's view, the 1855 treaty does not provide a guarantee that there will be no decline in the amount of fish available to take. The only method that would guarantee such protection would be to prevent all types of development, whether or not it is discriminatory of Indian treaty rights. The Stevens treaties simply do not provide the Tribe with such assurance or protection.

... Stevens treaties require that any development authorized by the states which injure the fish runs be non-discriminatory in nature *see Fishing vessel*, 443 U.S. 658, 99 S.Ct. 3055, 61 L.Ed.2d 823 but does not, however, guarantee that subsequent development will not diminish or eventually, and unfortunately, destroy the fish runs.

**7. Does the Corps trust responsibility to Indian tribes require mitigation for impacts to off reservation resources that the Tribes have a right to harvest (usufructuary rights)?**

The answer to this question depends on the nature of the usufructuary rights reserved or held by the Tribes. All usufructuary rights are not alike. For example, courts have held that a number of Tribes in the Pacific Northwest have usufructuary rights that are permanent in nature and are not subject to termination<sup>11</sup>. Those rights were held to have both a geographic component<sup>12</sup> and a component that entitled the Tribes to take a share of the available fish. Those courts have also held that while the Tribes were not entitled to be protected against off reservation activity that would result in a reduction of available fish, they were entitled to reasonable steps to mitigate adverse impacts from the activity.<sup>13</sup> The theoretical basis for the holding that reasonable mitigation is required was explained in *United States v. State of Washington*, 506 F.Supp. 187, 203 (1980)<sup>14</sup> as follows:

At the outset the Court holds that implicitly incorporated in the treaties' fishing clause is the right to have the fishery habitat protected from man-made

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<sup>11</sup>Other than by an Act of Congress.

<sup>12</sup>The right to fish forever in certain locations defined in the Treaty.

<sup>13</sup>"We do not find such an obligation in the treaty. Where the decision to allow development is not tinged with any discriminatory animus, the treaty fishing clause, as we read it, does not require compensation of the Indians on a make whole basis if reasonable steps, in view of the available resources and technology, are incapable of avoiding a reduction in the amount of available fish." *U.S. v. State of Washington*, 694 F.2d 1374, 1386 (1983)

<sup>14</sup>The Court's decision was vacated by the Ninth Circuit on other grounds in "*U.S. v. State of Washington*, 694 F.2d 1374. See also question 6.

despoilation. Virtually every case construing this fishing clause has recognized it to be the cornerstone of the treaties and has emphasized its overriding importance to the tribes. ... The Indians understood, and were led by Governor Stevens to believe, that the treaties entitled them to continue fishing in perpetuity and that the settlers would not qualify, restrict, or interfere with their right to take fish. ...

In contrast to the Pacific Northwest cases, the Chippewa in Wisconsin and Minnesota have been found to have usufructuary rights to hunt, fish and gather that are extinguished upon the land passing to private ownership<sup>15</sup>. Thus the underlying rationale in the Pacific Northwest cases - perpetual usufructuary rights - for requiring mitigation, as a trust responsibility, is not present with respect to the Chippewa's usufructuary rights. Moreover, a determination that the United States' trust obligations would require it to ensure that mitigation would be performed would be logically inconsistent with case law which has held that the usufructuary rights were extinguished when the land over which they originally could have been exercised passed to private ownership. Under the relevant case law no compensation would be due the Tribes, even if all of the land passed to private ownership, as it was understood that usufructuary rights "were subject to and limited by the demands of the settlers." Lac Courte Oreilles Band v. State of Wisconsin, 760 F.2d 177, 183 (1985)

Therefore, the specific usufructuary right in question should be examined to determine if mitigation would be required as a trust obligation. However, even if it is determined that mitigation would be required, it is not unlikely that mitigation that is or would be required in conjunction with the permit, even absent a trust responsibility,<sup>16</sup> would be sufficient to satisfy any Government trust obligation to mitigate.<sup>17</sup>

#### 8. Does the Corps trust responsibility to Indian Tribes require mitigation for adverse impacts to Tribal resources on reservations?

Each treaty at issue must be reviewed to determine what is or is not required under that treaty. Under the rationale of the Pacific Northwest cases it would appear that mitigation, to the extent reasonable and practicable is owed. However, those cases do not indicate that there is an environmental servitude owed the Tribes such that mitigation must ensure that there is no net adverse effect resulting from the federal action. In fact, the Court in United States v. State of

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<sup>15</sup>Lac Courte Oreilles Band, Etc. v Voigt, 700 F.2d 341 (1983) and Lac Courte Oreilles Band v. State of Wisconsin, 760 F.2d 177.

<sup>16</sup>Mitigation that would be required of the applicant even if there were no usufructuary rights or trust obligation to mitigate.

<sup>17</sup>See Pyramid Lake Paiute Tribe v. U.S. Department of Navy, 898 F.2d 1410 (9th Cir. 1990); Havasupai Tribe v. United States, 752 F. Supp. 1471 (D. Ariz. 1990); and Nance v. Environmental Protection Agency, 645 F.2d 701 (1981)



*Washington*, 694 F.2d 1374 (1982) has indicated that a resource may be rendered valueless without abrogation of treaty rights or trust responsibilities<sup>18</sup>. As stated by that Court at page 1381 "Any right may be subject to contingencies which would render it valueless." and at page 1382:

The spectre the district court raises of tribal fishermen unprotected by the environmental right dipping their nets into the water and bringing them out empty, 506 F.Supp. at 203, cannot alter the scope of *Fishing Vessel*. Only the extension of the servitude to ban even non-discriminatory development occurring both within and without treaty fishing areas assure against any decline in the amount of fish taken. The treaty does not grant such assurance.

It is also not unlikely that any trust obligation owed to require mitigation would be satisfied by mitigation that would be required in conjunction with the 404 permit process, absent a trust obligation.

Accordingly, mitigation, to the extent it is reasonable and practicable, for impacts to Tribal resources sited on reservations should be required.

**9. May an activity whose impact to a reservation's resources be such that it would defeat the purpose for which the reservation was established be permitted?**

Before one can begin to address this question, in practice, the terms of the treaty in question must be examined to determine if the Treaty specifically contemplates the activity to be permitted and if that activity, under the terms of the treaty takes precedence over or is subservient to the interests of the Tribe<sup>19</sup>. Assuming the treaty is not dispositive, the following is applicable.

I am not aware of a line of cases directly addressing this issue; however, *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252 (1973) gives us guidance as to how one court decided the issue and may be illustrative of how such issues would be decided in the future. The case concerned the Department of Interior's regulation, which the Tribe contended delivered "more water to the District than required by applicable court decrees and statutes, and improperly diverts water that otherwise would flow into nearby Pyramid Lake located on the Tribe's

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<sup>18</sup>This discussion is not applicable to impacts which would defeat the purpose for which the reservation was established.

<sup>19</sup>See *Sokaogon Chippewa Community v. Exxon Corp.*, 805 F.Supp. 680, 706 (E.D.Wis, 1992) "If the Sokaogon were to prevent Exxon from mining on the subject territory, it would be in contravention of the very considerations prompting the two treaties. Even assuming that the Sokaogon have rights in the land, the language and intent of the 1842 and 1854 Treaties demand that mineral development should take precedence over those rights.

reservation.” Although the Court could have analyzed the case under the Winters doctrine<sup>20</sup> It chose not to do so. The Court noted, at pages 254-255, that:

This Lake has been the Tribe’s principal source of livelihood. Members of the Tribe have always lived on its shore and have fished its waters for food. ...

Recently, the United States, by original petition in the Supreme Court of the United States, filed September, 1972 claims the right to use sufficient water of the Truckee River for the benefit of the Tribe to fulfill the purposes for which the Indian Reservation was created, “including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee as a natural spawning ground for fish and other purposes beneficial to and satisfying the needs of the Tribe. ...

The Court then determined (page 256) that:

... The Secretary’s duty was not to determine a basis for allocating water between the District and the Tribe in a manner that hopefully everyone could live with for the year ahead. This suit was pending and the Tribe had asserted well-founded rights. The burden rested on the Secretary to justify any diversion of water from the Tribe with precision. It was not his function to attempt an accommodation.

In order to fulfill his fiduciary duty, the Secretary must insure, to the extent of his power that, that all water not obligated by court decree or contract with the District goes to Pyramid Lake.

Accordingly, should the Corps determine that an activity needing a Corps permit would impact the reservation’s resources to an extent that they would defeat the purpose for which the reservation was established the permit should be denied.<sup>21</sup>

#### 10. What is the Winter’s doctrine and is it applicable to permit decisions?

*Felix S. Cohen’s Handbook of Federal Indian Law*, 1982 Edition, pages 575 to 576 offers a good explanation of the doctrine:

The Supreme Court first articulated this doctrine in *Winters v. United States* in 1908 and reaffirmed it in 1963 in *Arizona v. California. Cappaert v.*

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<sup>20</sup>*Winters v. United States*, 207 US 564, (1908)

<sup>21</sup>It is likely that if the impacts were so great as to defeat the purpose of the reservation that, even without considering the Corps’ trust obligations, the permit would be denied as not being in the public interest. (A permit whose impact would deprive any community of the ability to maintain a moderate living standard is not likely to be in the public interest.)

United States contains the Court's most succinct and lucid statement of the governing principles of reserved water rights:

This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of reservation and is superior to the rights of future appropriators. ... The doctrine applies to Indian reservations and other Federal enclaves, encompassing water rights in navigable and nonnavigable streams.

In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purpose for which the reservation was created.

This doctrine arose and has been applied extensively in appropriative water law states (generally western states that have limited supplies of water). The doctrine has not been applied to riparian water law states and may not be applicable to them.

**11. When, in the permitting process sequence, should the Corps trust obligations be considered?**

Since the Tribal trust issues, alone, may be determinative<sup>22</sup> of the outcome of the permit decision, those issues should be considered immediately after or in conjunction with consideration of the avoidance issue.

**12. If the Tribal trust issues are not dispositive of the permitting decision, do we need to consider the Tribe's concerns further?**

Yes. The Tribal concerns and the impacts of the proposed activity on Tribal resources should be considered in the public interest review just as any other similarly sized community would be. Such consideration should not be evaluated based on Tribal trust responsibility considerations<sup>23</sup> but should take into account the relative impact the proposed activity would have

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<sup>22</sup>For example, if the permitted activity would violate a treaty provision, the permit application would be denied.

<sup>23</sup>These considerations should have been addressed previously.

on the community<sup>24</sup>. The same impact to natural resources may have a greater effect on individual Indians than it would on non-Indians, not only because of greater dependence on those resources, but also because the individual Indian may be more closely tied to the defined land area than his non-Indian counterpart. Additionally, any spiritual or cultural impact to the Tribe that would result from the proposed permit activity should be evaluated in the public interest review.

**13. Should the Corps apply different criteria to permit applications for activities within a reservation's exterior boundaries than would be applied to a permit application for activities outside a reservation's exterior boundaries?**

No. The criteria applied should be the same. However, it is very likely that an activity that is sited within the reservation's exterior boundaries would have a greater impact on Tribal resources than would an activity that is sited off reservation. Moreover, the applicant would still have to comply with all applicable local regulations, thus the Tribe may be able to impose its requirements<sup>25</sup> on the applicant. Such requirements would be independent of and in addition to any Corps' permit requirement or condition. Further, if the Tribe has jurisdiction over the activity and exercises its jurisdiction to prohibit the activity<sup>26</sup> the permit application to the Corps should be denied without prejudice.

**14. Who is the Federal Trust Obligation owed to?**

The Trust obligation is owed to Federally Recognized Indian Tribes.

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Edwin C. Bankston  
District Counsel

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<sup>24</sup>For example, an activity that would diminish the supply of game may affect Indian communities to a greater degree than non-Indian communities, because the Indian community may be more dependent on game than the non-Indian community. This greater importance to the Indian community should be factored into the evaluation.

<sup>25</sup>Including preventing the activity if the Tribe has sufficient authority to do so.

<sup>26</sup>Such as denying a required Tribal permit.



Washington, D.C. 20520

FEB 12 2016

The Honorable  
Bernie Sanders  
United States Senate  
Washington, DC 20510

Dear Senator Sanders:

Thank you for your letter of October 23, 2015 regarding Enbridge Energy, LP and the replacement of its Line 3 pipeline. The Department also appreciates your interest in our review of Enbridge's Presidential Permit application seeking authorization for increased throughput in the border segment of Enbridge's existing Line 67 pipeline, formerly known as the Alberta Clipper pipeline. We sincerely regret the delay in responding to your inquiry.

As you may know, Enbridge's recent construction of interconnections between the Line 67 pipeline and the Line 3 pipeline were the subject of litigation against the Department in the United States District Court for the District of Minnesota. We welcomed the court's decision in December that the Department's actions at issue in the case were not subject to judicial review and that the related claims would be dismissed.

Regarding Enbridge's Presidential Permit application for the border segment of Line 67, the Department is considering the application pursuant to Executive Order 13337, and we are conducting a rigorous, transparent, and objective review. As part of that review, we are preparing a draft Supplemental Environmental Impact Statement (SEIS) to analyze the project's potential environmental impacts in the United States. We hope to have the draft SEIS available for public comment in the coming months.

We hope this information is useful. Please do not hesitate to contact us again if we can be of any further assistance on this or any other matter.

Sincerely,

A handwritten signature in cursive script that reads "Julia Frifield".

Julia Frifield  
Assistant Secretary  
Legislative Affairs

# HYDROLOGICAL AND BIOGEOCHEMICAL RESEARCH IN THE SHINGOBEE RIVER HEADWATERS AREA, NORTH-CENTRAL MINNESOTA

U.S. GEOLOGICAL SURVEY  
Water-Resources Investigations Report 96-4215





**Vern Peterson**

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**From:** "Rosenberry, Donald" <rosenber@usgs.gov>  
**To:** "Vern Peterson" <marylake@unitelc.com>  
**Sent:** Monday, August 11, 2014 12:55 PM  
**Attach:** Delin etal USGS-FS98.pdf; Delin&Herkelrath GWM&R14.pdf  
**Subject:** Re: Vern Peterson

Vern,

It was great to talk to you this morning after quite a few years. I'm glad all's well (except for the silt in the lake) up your way. As for the proposed pipeline, attached are two papers that you might find useful. The paper published in 1998 gives a nice overview of the oil spill, cleanup, and evolution of the oil plume in the aquifer. The 2014 paper talks more about removing oil with a shallow groundwater pump. It is a bit more technical but it might be useful nonetheless.

As for aquifers in the area, an unconfined "water-table" aquifer extends beneath just about all of Hubbard County. This would be the first aquifer to be contaminated by any oil spill and this is the type of aquifer that is being monitored at the Bemidji oil-spill study site. Most private water-supply wells are installed in sands that are beneath the shallow unconfined aquifer. The well screen and surrounding sediments from which groundwater is pumped are often separated from the shallow aquifer by one or more layers of silt or clay that would prevent or greatly slow movement of oil to a pumping well, assuming that the well was drilled and completed correctly. Unfortunately, some wells are not sealed very well and they can allow movement of shallow, contaminated water down to a well screen when the well is being pumped. Once oil gets beneath a confining layer and into the deeper sediments it is much more difficult and sometimes virtually impossible to remove.

Don

On Mon, Aug 11, 2014 at 9:37 AM, Vern Peterson <[marylake@unitelc.com](mailto:marylake@unitelc.com)> wrote:

Don, I don't think I got my e-mail in correctly [marylake@unitelc.com](mailto:marylake@unitelc.com) This is correct. Vern Peterson

--

Donald Rosenberry  
U.S. Geological Survey  
Box 25046, MS 413  
Denver, CO 80225-0046  
303-236-4990  
303-704-6588 cell  
[rosenber@usgs.gov](mailto:rosenber@usgs.gov)  
<http://profile.usgs.gov/rosenber/>





## **NOTICE OF AVAILABILITY OF SCOPING EAW AND DRAFT SCOPE FOR SANDPIPER PIPELINE AND LINE 3 REPLACEMENT PROJECTS AND SCHEDULE FOR EIS SCOPING MEETINGS**

*Issued: April 11, 2016*

### **Project Description**

#### Sandpiper Pipeline Project

The North Dakota Pipeline Company LLC (NDPC) is proposing to construct and operate a new 616-mile oil pipeline that would extend from Beaver Lodge Station, south of Tioga, North Dakota through a new terminal at Clearbrook, Minnesota and then on to an Enbridge affiliate's terminal and tank farm in Superior, Wisconsin.

The proposed project, called the Sandpiper Pipeline project (or Sandpiper), includes about 303 miles of new pipeline in Minnesota. NDPC is proposing to install 24-inch diameter pipeline from the North Dakota border to Clearbrook, and 30-inch diameter pipeline from Clearbrook to the Wisconsin border. The project also includes construction of a new oil terminal at Clearbrook and upgrades to the existing Pine River facility.

The proposed project is located in Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

#### Line 3 Replacement Project

Enbridge Energy, Limited Partnership (Enbridge) is proposing the Line 3 Replacement project in order to address safety and integrity issues associated with the existing Line 3 pipeline. The pipeline replacement is proposed to follow existing Line 3 from the Minnesota-North Dakota border to Clearbrook and then follow the same route proposed for the Sandpiper pipeline from Clearbrook to the Minnesota-Wisconsin border. The Line 3 route is approximately 337 miles long in Minnesota. The project also includes upgrades to existing pump stations at Clearbrook, Donaldson, Plummer, and Viking, and construction of new pump stations at Backus, Cromwell, Palisade, and Two Inlets.

The proposed project is located in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

<b>Meeting Information</b>		
<b>DATE</b>	<b>TIME</b>	<b>LOCATION</b>
Monday, April 25, 2016	6:00 pm – 9:00 pm	Tobies Restaurant and Bakery 404 Fire Monument Road Hinckley, MN 55037
Tuesday, April 26, 2016	6:00 pm – 9:00 pm	The Falls Ballroom 15870 Minnesota 27 Little Falls, MN 56345
Wednesday, April 27, 2016	6:00 pm – 9:00 pm	Crookston Inn & Convention Center 2200 University Ave Crookston, MN 56716
Thursday, April 28, 2016	6:00 pm – 9:00 pm	Ralph Engelstad Arena 525 Brooks Ave North Thief River Falls, MN 56701
Monday, May 2, 2016	6:00 pm – 9:00 pm	Bemidji State University 1500 Birchmont Dr. NE #31 Bemidji, MN 56601
Tuesday, May 3, 2016	10:00 am – 1:00 pm	American Legion 900 East 1st Street Park Rapids, MN 56470
Tuesday, May 3, 2016	6:00 pm – 9:00 pm	Park Rapids Century School 501 Helten Avenue Park Rapids, MN 56470
Thursday, May 5, 2016	10:00 am – 1:00 pm	Black Bear Casino Resort 1785 MN-210 Carlton, MN 55718
Thursday, May 5, 2016	6:00 pm – 9:00 pm	Black Bear Casino Resort 1785 MN-210 Carlton, MN 55718
Monday, May 9, 2016	6:00 pm – 9:00 pm	Saint Paul RiverCentre 175 West Kellogg Boulevard Saint Paul, MN 55102
Tuesday, May 10, 2016	3:00 pm – 6:00 pm	Rice Lake Community Center 13830 Community Loop Bagley, MN 56621
Wednesday, May 11, 2016	10:00 am – 1:00 pm	East Lake Community Center 36666 State Highway 65 McGregor, MN 56718

- Each meeting will include an informal open house (1 hour), a formal presentation by state agency staff (30 minutes), and an opportunity for public comments (1.5 hours).
- State agency staff members will facilitate the meeting and are available to respond to questions about the permitting process and the project.
- NDPC and Enbridge (applicants) staff will also be available to answer questions about the proposed projects during the informal open house.
- You may add verbal comments, written comments, or both into the record. A court reporter will be available to take verbal comments, and comment cards will be available for people who wish to provide written comments for the public record.

**Comment Period** Written comments will be accepted through **Thursday, May 26, 2016** online or by mail.

**Online** [www.sandpiperline3.us](http://www.sandpiperline3.us)

**Email** [Pipeline.Comments@state.mn.us](mailto:Pipeline.Comments@state.mn.us)

**U.S. Mail** Jamie MacAlister, Environmental Review Manager  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul MN 55101

**Fax** 651-539-0109

**Important** Comments will be made available to the public via the PUC's and the Department of Commerce's websites, except in limited circumstances consistent with the Minnesota Government Data Practices Act. Personally identifying information is not edited or deleted from submissions. Please include the PUC Docket Numbers (Sandpiper: PL-6668/CN-13-473 and PPL-13-474, Line 3: PL-9/CN-14-916 and PPL-15-137) in all communications.

**Note:** Each project will have its own scope and EIS, however, public meetings will address both projects.

**Eminent Domain:** If issued a route permit by the PUC, Enbridge and NDPC may use the power of eminent domain to take land for this project. Any new easement or right-of-way agreements reached between Enbridge/NDPC and landowners before a pipeline route permit is issued will not be considered in the PUC's final decision.

## How to Learn More

**Department of Commerce Project Website (documents are available at these websites):**

Sandpiper: <http://mn.gov/commerce/energyfacilities/Docket.html?Id=33599>

Line 3: <http://mn.gov/commerce/energyfacilities/Docket.html?Id=34079>

**Project Mailing List:** Sign up to receive notices about project milestones and opportunities to participate (meetings, comment periods, etc.). Contact [docketing.puc@state.mn.us](mailto:docketing.puc@state.mn.us), 651-201-2204, or 1-800-657-3782 with the docket number (*Sandpiper: 13-473 & 13-474*) or (*Line 3: 14-916 & 15-137*), your name, mailing address, and email address.

**Full Case Record:** See all documents filed in this docket via the PUC's website - [mn.gov/puc](http://mn.gov/puc), select *Search eDockets*, enter the year (*13*) and the docket number (*473*) for the Sandpiper CN or (*13*) and (*474*) for the Sandpiper Route Permit, then select *Search*. Enter the year (*14*) and the docket number (*916*) for the Line 3 CN or (*15*) and (*137*) for the Line 3 Route Permit, then select *Search*.

**Community Locations:** The Draft Scoping Decision Documents and Scoping EAWs will be available at the following locations in communities crossed by the proposed pipelines:

- Township Clerk
- City Clerk
- County Auditor or Administrator
- Public Libraries:
  - Hennepin County Library – Minneapolis Central, 300 Nicollet Mall, Minneapolis
  - Bemidji Public Library, 509 American Avenue NW, Bemidji
  - Crookston Public Library, 110 North Ash Street, Crookston
  - Duluth Public Library, 520 W Superior Street, Duluth
  - Kitchigami Regional Library, 212 Park Ave., PO Box 14, Pine River
  - East Central Regional Library, 244 So. Birch Street, Cambridge
  - Great River Regional Library, 1300 West St. Germain, St. Cloud

**Available on CD:** You may contact DOC-EERA staff to request copies of these documents on CD (see contact information below).

**Minnesota Statutes and Rules:** The certificate of need application is reviewed under Minnesota Statute 216B and Minnesota Rules Chapter 7853. The pipeline route permit application is reviewed under Minnesota Statute 216G and Minnesota Rules Chapter 7852. The EIS will be reviewed under Minnesota Rules Chapter 4410.2000.

Minnesota Statutes and Rules are available at [www.revisor.mn.gov](http://www.revisor.mn.gov).

## Project Contacts

**Public Utilities Commission Energy Facilities Planner**

Scott Ek – [scott.ek@state.mn.us](mailto:scott.ek@state.mn.us) or 651-201-2255

**Department of Commerce Environmental Review Manager**

Jamie MacAlister – [Pipeline.Comments@state.mn.us](mailto:Pipeline.Comments@state.mn.us) 651-539-1775 or 1-800-657-3794

**Enbridge Energy, Limited Partnership Project Contact**

[www.Enbridge.com/L3andSPP](http://www.Enbridge.com/L3andSPP) – [enbridgeinmn@enbridge.com](mailto:enbridgeinmn@enbridge.com) or 1-855-788-7805

**North Dakota Pipeline Company, LLC Project Contact**

[www.Enbridge.com/L3andSPP](http://www.Enbridge.com/L3andSPP) – [enbridgeinmn@enbridge.com](mailto:enbridgeinmn@enbridge.com) or 1-855-788-7805

This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing or speech disabilities may call us through their preferred Telecommunications Relay Service.

If any reasonable accommodation is needed to enable you to fully participate in these meetings (e.g., sign language, foreign language interpreter, large print materials), please contact the PUC at 651-296-0406 or 1-800-657-3782 at least one week in advance of the meeting.

**CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline  
and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings**

**Docket No. PL 6668/CN-13-473 and PL6668/PPL-13-474**

**Dated this 12<sup>th</sup> day of April 2016**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street  Haskell, OK 74436	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118  Deer River, Minnesota 56636	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	4748 Wisconsin Ave NW  Washington, DC 20016	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Peter	Erlinder	proferlinder@gmail.com	International Humanitarian Law Institute	325 Cedar St. Suite 308 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
John R.	Gasele	kgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	150 S Fifth St Ste 2300  Minneapolis, MN 54002	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Jon	Godfread	Jon@ndchamber.com	Greater North Dakota Chamber	2000 Schafer Street  Bismarck, ND 58501	Electronic Service	No	OFF_SL_13-473_Official Service List - CC

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Helene	Herauf	Laney@ndchamber.com	Greater North Dakota Chamber	PO Box 2639  Bismarck, ND 58502	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Kathryn	Hoffman	khoffman@mncenter.org	Minnesota Center for Environmental Advocacy	26 E. Exchange St Ste 206 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street  St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
Rachel	Kitze Collins	rakitzecollins@locklaw.com	Lockridge Grindeal Nauen PLLP	100 Washington Ave S Suite 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	PO Box 64620  St. Paul, MN 55164-0620	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Brian	Meloy	brian.meloy@stinson.com	Stinson, Leonard, Street LLP	150 S 5th St Ste 2300  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418  White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road  St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_13-473_Official Service List - CC

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Neil	Roesler	nroesler@vogellaw.com	Vogel Law Firm	218 NP Avenue PO Box 1389 Fargo, ND 58107	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
Eileen	Shore	eileenshore@outlook.com	Friends of the Headwaters	3137 42nd Ave So  Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583  Park Rapids, MN 56470	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Byron E.	Starns	byron.starns@stinson.com	Stinson Leonard Street LLP	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Randy V.	Thompson	rthompson@nmtlaw.com	Nolan, Thompson & Leighton	5001 American Blvd W Ste 595  Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Gerald	Von Korff	jvonkorff@rinkenoonan.com	Rinke Noonan	PO Box 1497  St. Cloud, MN 56302	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 710  St. Paul, MN 55102	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309  Duluth, MN 55802	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC



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Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street  Haskell, OK 74436	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118  Deer River, Minnesota 56636	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	4748 Wisconsin Ave NW  Washington, DC 20016	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
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David	Zoll	djzoll@locklaw.com	Lockridge Grindal Nauen PLLP	100 Washington Ave S Ste 2200  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-474_Official Service List - CC

# There Will Be More New Jobs in Solar Than Oil by the End of the Year

- by [Jonathan Chew](#) @sochews  
April 20, 2016, 10:00 AM EDT  
<http://fortune.com/2016/04/20/solar-oil-jobs-indeed/>



Workers Stephen Janota, left, and Matt Bart, install Solar Service Inc. photovoltaic (PV) solar electric panels on the roof of a home in Park Ridge, Illinois, U.S., on Tuesday, Sept. 10, 2013. Photograph by Tim Boyle—Bloomberg via Getty Images

## **Indeed just released this startling info on energy jobs.**

The world's biggest oil companies [are slashing jobs](#) to cope with decreasing revenues, and one knock-on effect has been the drop in oil job postings.

Conversely, however, if the current pace of postings hold, solar would become the largest market for energy jobs by the fourth quarter of 2016, according to numbers tabulated by Indeed, the [world's highest traffic job site](#).

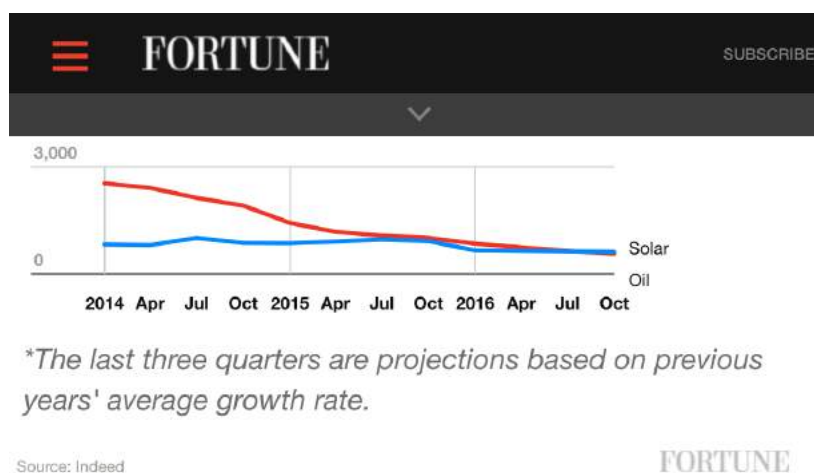
According to data provided to Fortune, job postings for the solar industry currently make up 39% of global energy-related work on Indeed, whereas oil jobs account for 50%. (Indeed declined to release the actual job posting figures.)

But that relationship is changing—over the past two years, oil job postings are declining by around 12.6% every quarter, while solar jobs are dropping at an average of 1.7% per quarter.

At this rate, solar will overtake oil for job postings by the end of the year:

## Solar And Oil Job Postings On Indeed.com

According to job site Indeed, solar job postings are expected to surpass oil jobs by the end of 2016. This chart shows the number of solar and oil jobs for every one million total job postings



“The decline in oil prices has not just rocked that industry, but jobs linked to both fossil fuels and renewable energy,” said Tara Sinclair, chief economist at Indeed. “Whether or not solar overtakes oil on Indeed, energy workers would do well to position themselves for work in renewable fields such as solar, wind, and hydroelectricity.”

This corresponds with [a recent report](#) by The Solar Foundation that highlighted the rapid growth of the U.S. clean energy sector. By the end of this year, the solar sector should have 240,000 workers under its wings, and currently employs around 77% more workers than the coal mining industry.

The world’s largest oil companies, [in a battle to fight](#) the effects of a 60% plunge in oil prices over the past 18 months, have been brutally cutting jobs. BP [BP - 0.54%](#) , sixth on the [Fortune 500](#), said it would cut 7,000 jobs by 2017, or almost 9% of its workers. Late last year, Chevron [CVX 0.11%](#) [said](#) that it would cut 10% of its workforce, or 6,000 to 7,000 jobs.

**From:** [John Munter](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#); [Seuffert, Will \(MPCA\)](#)  
**Subject:** Follow up on my RGU-change request for Sandpiper-Line 3 mailed March 21  
**Date:** Saturday, April 09, 2016 3:34:58 PM

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Dear Ms Ahlers-Nelson

You communicated April 8 by email with Willis Mattison and happened to mention that no one else had submitted an RGU change request for Sandpiper-Line 3, however I mailed in a request to the following individuals on March 21, 2016 requesting an RGU change. So, here is a copy for you.

Thanks,

John Munter, Warba, MN

March 20, 2016  
David Fredrickson  
Chairman of the Board  
Minnesota Environmental Quality Board (EQB)  
520 Lafayette Rd  
St Paul Minnesota 55155

Will Seuffert  
Executive Director  
Minnesota Environmental Quality Board (EQB)  
520 Lafayette Rd  
St Paul Minnesota 55155

Courtney Ahlers-Nelson  
Planning Director  
Environmental Review Program  
Minnesota Environmental Quality Board (EQB)  
520 Lafayette Rd  
St Paul Minnesota 55155

Re: Sandpiper and Line 3 RGU changed from PUC to PCA and/or DNR

Fellow Minnesotans:

I am corresponding to you as an individual and resident of Warba, Minnesota which is three hours north of you up Highway 65 and four miles from the Alberta Clipper. I have testified orally and in writing for the past few years on the two Clipper upgrades, the Sandpiper, and Line 3 and have been very disappointed concerning how flawed the process is from the ALJ to the DOC to the PUC. However I will confine myself to Sandpiper/Line 3 comments.



It is really incumbent upon the EQB to change the RGU to the PCA and/or DNR in light of the recent court decision requiring an EIS and not just a CEA for the new upcoming and proposed 'new pipeline corridor' piercing the heart of Northern Minnesota's lake and wetlands country. Can we expect anything but a 'wolf in sheep's clothing' with the PUC (and the DOC) dressing up the same old CEA in a pretty new EIS dress?

Can we expect anything but bias from the PUC, DOC, and ALJ who, shockingly, refused to even comment on the negative critiques of the PCA and DNR concerning the Enbridge proposed route in Sandpiper testimony? Is money and cost the ONLY driving issue rather than routing a pipeline farther south through farmland where a spill can be cleaned up easily in contrast to it getting into a wetland, lake, river, stream, or aquifer farther north? The current routing is crazy on its face.

We know all of these pipelines will all break. It is only a question of time. Enbridge NEVER replaces a pipeline except when they have an ulterior motive in the case of Line 3. They still operate a 66 year old pipeline going through Red Lake and they still operate a 62 year old pipeline going under the Mackinac Straits which could pollute a sizeable segment of the Great Lakes. They only are replacing Line 3 from the 60's because they are prohibited by its 900 'anomalies' from running it to capacity with tar sands AND they are getting a two-fer if the State allows them to let it lie in place so they don't have to dig it up which would uncover all the little leaks slowly wending their way down to the groundwater they would be mandated to spend a lot of money cleaning clean up.

To have the PUC (DOC) do the environmental assessment is a conflict of interest with the mandate of the DOC to regulate (promote) commerce. Peer Review should be the guiding principle. PCA has obviously got a lot more staff and experience in dealing with pipelines and their leaks and the DNR has obviously got a knowledge regarding proper routings and valued opinions on a WHOLE NEW OIL CORRIDOR than the DOC could ever conceive of. The PCA and DNR can do or can farm out competently a full risk assessment and worst case scenarios.

The PCA and DNR have the staff to adequately review alternative routings which the PUC cannot. It is totally unrealistic to expect individuals like me to propose and get accepted another routing against the army of Enbridge arguing against me. This is another very crazy part of the current process.

The Department of Commerce has its place in economic trends, market for oil, and—maybe—alternate carriers such as trains. But, they have not distinguished themselves so far and should not be given a privileged place over other agencies. All their data needs to be re-done in fact in the fast-changing current environment and other agencies need to hold THEIR feet to the fire. The Feds are abolishing the 'bomb train cars' and mandating standards better than the best on the rail these days.

The price of oil is down so far only a few counties in the Bakken can pump at a profit and Alberta really needs oil price in the 85-100\$ a barrel range to make a

profit. All these pipelines were being planned in an era that planned on the doubling and tripling of oil volumes. That will not happen for at least many years. It is clear, in fact, that the Saudis plan on bankrupting these oil companies. Now THAT we could, maybe, plan on. Renewables are catching on quickly. The 2012 MN study on renewables said Minnesota could be 100% energy renewable with rooftop solar and wind machines with storage going north to south.

Without a different RGU lawsuits could surely be filed again. The tribes have not been consulted adequately but they engaged in the process showing their desire. By rights, they should file federal lawsuits alleging infringement of the 19<sup>th</sup> century treaty rights to 'hunt, fish, and gather' off reservation if pipelines infringe upon their wild rice. Please do not let the PUC and DOC short-circuit true review.

Sincerely, John Munter  
14860 Bruce Creek Rd, Warba, MN 55793 (218-492-4179,  
mumooatthefarm@yahoo.com)

**From:** [Dahl, Erik \(MPCA\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** FW: Comments From MRCC Chairman Jim Stratton  
**Date:** Monday, May 02, 2016 10:43:36 AM  
**Attachments:** [MRCC MPUC Comments on Sandpiper Authority Transfer.doc](#)

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I think this was sent to me in error

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**From:** Wolf, Dan (PUC)  
**Sent:** Monday, May 02, 2016 10:40 AM  
**To:** Seuffert, Will (MPCA)  
**Cc:** Dahl, Erik (MPCA)  
**Subject:** FW: Comments From MRCC Chairman Jim Stratton

For the EQB, Dan Wolf

---

**From:** [dan27@frontiernet.net](mailto:dan27@frontiernet.net) [<mailto:dan27@frontiernet.net>]  
**Sent:** Friday, April 29, 2016 2:59 PM  
**To:** Wolf, Dan (PUC) <[dan.wolf@state.mn.us](mailto:dan.wolf@state.mn.us)>  
**Cc:** Jim Stratton <[jkmc@gctel.net](mailto:jkmc@gctel.net)>  
**Subject:** Comments From MRCC Chairman Jim Stratton

Hi Dan:

Attached are comments on the shifting authority from PUC to MPCA on Sandpiper. Apologies for sending it to you but I can't find where to send it from the website. I trust you can direct it to the right place. Thanks and have a great weekend.

Dan Larson  
MN Rural Counties Caucus  
612-210-2493

To: The Environmental Quality Board

From: Commissioner Jim Stratton  
MN Rural Counties Caucus Chairman  
Douglas County Commissioner

Date: April 28, 2016

Subject: Opposition to Transfer of Authority

The Minnesota Rural Counties Caucus strongly opposes removing the authority of the Minnesota Public Utilities Commission (MPUC) as the responsible government unit (RGU) for review and permitting of the Sandpiper pipeline project. A proposal to transfer this authority flies in the face of a previous memorandum between the MPUC, Department of Commerce, Pollution Control Agency and MDNR.

County executives in the MRCC strongly support the Sandpiper project and are increasingly troubled by what appears to be shifting standards and potential internal manipulation of a review process that should have been completed months, if not years, ago.

At this juncture, the effort to shift authority away from MPUC by suggesting the agency does not have the experience to conduct such a review is an outrage to the process and to the sensibilities of concerned citizens and organizations like the MRCC. In fact, in our opinion the MPUC is best equipped to deal with this process in a fair and balanced manner as it has done with dozens of equally sensitive projects in the past.

The MRCC has never before raised this type of concern with a project that is pending approval through the regulatory process. Conversely, it has never before witnessed the blatant roadblocks, endless delays, and open internal opposition this permit request has endured.

Pipelines are a proven entity and are highly preferable to additional heavy trucks on our already overburdened highway system, or additional oil trains through our local communities.

This project will benefit greatly the Greater Minnesota counties, cities, towns and school districts along its route, and amplify those benefits within the regional and state economy.

Rules matter. Experience matters. Fairness matters. In our opinion, transferring authority from the MPUC violates the rules; ignores historical precedent; and, is unfair to the People of Minnesota.

...

**From:** [EOB Monitor \(EOB\)](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** FW: Enbridge pipelines environmental review  
**Date:** Thursday, April 21, 2016 7:28:50 AM

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**From:** Jeff Schroeder [mailto:jeffreyralphschroeder@gmail.com]  
**Sent:** Thursday, April 21, 2016 1:20 AM  
**To:** EOB Monitor (EOB)  
**Subject:** Enbridge pipelines environmental review

If the Minnesota Department of Commerce is leading an environmental study, they will be focused on getting Enbridge what they want rather than what is best for the environment. Do we put banks in charge of studies regarding racial disparities, they would tell us that money is green and they don't see a problem? The MPCA should be heading the environmental review. Commerce should have a voice regarding the "need" for a pipeline but certainly doesn't have the expertise regarding environmental issues to lead an "environmental" review.

If Commerce determines that there is a need for more pipeline capacity, Enbridge should not be in charge of picking the route. The state should determine the route that best serves the interests of the people of the state and the environment. The state's role is not to pander to corporations but to determine what is best for its citizens. Giving Enbridge the driver's seat only guarantees that they will get where THEY want to go.

**From:** [John & Jo Lerohl](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Fw: EQB / another comment period on Enbridge pipeline projects  
**Date:** Monday, May 02, 2016 3:48:26 PM  
**Attachments:** [image001.jpg](#)

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**From:** [John & Jo Lerohl](#)  
**Sent:** Monday, May 02, 2016 3:41 PM  
**To:** [John & Jo Lerohl](#)  
**Subject:** Fw: EQB / another comment period on Enbridge pipeline projects

**From:** [John & Jo Lerohl](#)  
**Sent:** Monday, May 02, 2016 11:41 AM  
**To:** [pipeline.EQB@state.mn.us](mailto:pipeline.EQB@state.mn.us) ; [Debra Kiel](#)  
**Subject:** Fw: EQB / another comment period on Enbridge pipeline projects

I'm forwarding this Email because I believe that if Minnesota, keeps on with this silliness. We will have a oil train explosion in a major metro area and people will be killed. The pipeline is the best and most safe way to ship oil.

John Lerohl  
 Red Lake County Commissioner

**From:** [Jennifer Maleitzke](#)  
**Sent:** Tuesday, April 26, 2016 2:28 PM  
**To:** [Bob Schmitz](#)  
**Cc:** [beekeeper@gvtel.com](mailto:beekeeper@gvtel.com)  
**Subject:** EQB / another comment period on Enbridge pipeline projects

Hi Bob,

I realize you had your Board meeting today and I should've talked to you about this yesterday – but wanted to run something by you any way (I've been up to my eyeballs preparing for the next round of public meetings that started yesterday).

The Minnesota Environmental Quality Board currently has a public comment period open on our pipeline projects because there's been an official request to change the responsible government unit (RGU) from the Public Utilities Commission to a joint RGU of the Pollution Control Agency and the Department of Natural Resources. You can see all of the information here:

<https://www.eqb.state.mn.us/content/environmental-quality-board-seeks-public-comment-request-different-responsible-governmental>.

We are opposed to this motion because we believe the statutes clearly state that the responsible government unit for pipeline projects is the Public Utilities Commission, and any more changes could lead to further delays. Here's our argument:

*The Commission has the greatest responsibility for supervising and approving the Projects. Specifically, the Commission has sole authority to determine the need for and routing of the Projects. Under these statutes and rules, the Commission is tasked with evaluating a full and broad spectrum of potential effects. To consider the environmental effects, the Commission works with the Department of Commerce to conduct its environmental review. By contrast, DNR and PCA have important, yet more limited, resource-specific roles. For example, DNR may issue licenses to cross state lands, and PCA may issue any needed air emissions or water appropriation permits for the Projects. However, these agencies do not have authority over the Projects as a whole. Nor are they charged with reviewing the socioeconomic analysis required by the Commission's rules. Neither DNR nor PCA have conducted any project-wide environmental review for pipelines or other linear infrastructure projects. Accordingly, the Commission has greater expertise in analyzing the Projects' potential impacts.*

The PCA and DNR also oppose this motion, as they've stated on the record that PUC and Department of Commerce have the most knowledge of pipeline environmental review and siting. DNR/PCA have signed an agreement to work in conjunction with the PUC. The joint PCA/DNR letter states:

*The MPCA and the DNR have limited overall regulatory authority over these projects. The PUC has the primary approval authority for an entire pipeline project, including routing decisions, while the MPCA and DNR have authority to regulate specific activities in connection with pipeline construction and operation. MPCA's and DNR's authorities include various permits and licenses for construction stormwater, public water and public land crossings, air emissions, water discharges, endangered species protection, water appropriations, and minerals encumbrances. However, neither the MPCA nor the DNR has such a singular regulatory role to play that it warrants removing the RGU status from the PUC. The PUC's current approach, in which it delegated the preparation of the EIS to Commerce with the explicit condition of involving the MPCA and DNR, accomplishes the goal of bringing the full range of state expertise to the analysis.*

Might you be willing to write a brief letter on behalf of the County, simply noting these issues? You can find the full request and letters in the [EQB's April agenda packet](#).

The comment period closes May 2. **Comments may be provided to EQB in writing via email at [Pipelines.EQB@state.mn.us](mailto:Pipelines.EQB@state.mn.us)**. The EQB will present a Findings of Fact, Conclusions and Order which will come before the Minnesota Environmental Quality Board at its regular meeting on May 18, 2016.

If this is too late of a notice, I completely understand. Again, I apologize for not sending earlier. If you have any questions, please let me know – Thanks,

Jen

**Jennifer Maleitzke**

Public Affairs – Senior Consultant

**Environmental Resources Management (ERM)pipe**

1000 IDS Center, 80 South Eighth Street | Minneapolis | MN | 55402

T+612 215 6088 | M+651 270 0239

E [jennifer.maleitzke@erm.com](mailto:jennifer.maleitzke@erm.com) | W [www.erm.com](http://www.erm.com)



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**From:** [Seuffert, Will \(MPCA\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** FW: Organizational support for change in RGU for Sandpiper/Line 3 EIS  
**Date:** Thursday, April 14, 2016 9:04:36 AM  
**Attachments:** [4.13.2016 Letter To EQB on RGU Change.doc](#)

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**From:** kath77holl77@gmail.com [mailto:kath77holl77@gmail.com] **On Behalf Of** Kathy Hollander  
**Sent:** Wednesday, April 13, 2016 3:06 PM  
**To:** Frederickson, Dave (MDA); Seuffert, Will (MPCA)  
**Cc:** Young, Sabrenia (MDA)  
**Subject:** Organizational support for change in RGU for Sandpiper/Line 3 EIS

Good afternoon Dave and Will,

Attached please find a letter with multi-organizational support for Willis's request to the Environmental Quality Board for a change in the responsible government unit for the Sandpiper and Line 3 Environmental Impact Statement.

See you at the EQB meeting on the 20th!

Kathy Hollander  
MN350  
612 245 9381

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Dear Chairman Fredrickson,

April 13, 2016

We, the undersigned members of the Minnesota Environmental Partnership, support the citizen request to designate the Minnesota Department of Natural Resources (MDNR) and Minnesota Pollution Control Agency (MPCA) as co-lead responsible governmental units for preparation of the EIS for the Sandpiper and Line 3 Replacement pipelines. We do not support the Memorandum of Understanding that currently exists between the Department of Commerce (DOC), MDNR, and MPCA naming the DOC as the lead agency.

We support the citizen request with four main points.

First, a change in the law in 2005 created an inherent conflict of interest when Environmental Quality Board (EQB) staff and a form of alternative environmental review authority for pipeline projects was transferred to the DOC. The DOC, tasked with maintaining a promotional relationship with businesses in general, was then also expected to perform objective environmental review of oil pipeline industry proposed projects. Two years later, the Koch brothers' MinnCan Pipeline project route was approved across the delicate headwaters of the iconic Mississippi River and through the heart of Minnesota's most pristine lake, wetland, and woodland regions with minimal public or sister agency involvement and with limited environmental review by DOC.

Second, a now awakened citizenry, tribes, and environmental groups are insisting on robust adherence to our state's Minnesota Environmental Protection Act laws, since the creation of a new pipeline corridor is involved. We are concerned the DOC will continue to limit the scope of alternative routes eligible for consideration in the upcoming EIS, as it has done in the past. A citizen lawsuit revealed the illegality of DOC's circumvention of MEPA with its *alternative environmental review* process for pipelines when the Minnesota Court of Appeals agreed with citizens and ordered a full EIS instead.

Third, the MDNR and MPCA have much greater natural resource protection authority and far greater expertise for assessing environmental impacts from pipeline construction and potential oil spills. Since the court-ruled full EIS will be the first ever to be prepared for a crude oil pipeline in Minnesota, it needs to be done with transparency and without an apparent conflict of interest.

Fourth, independent peer-reviewed science for the EIS must be ensured through establishment of an outside panel of experts as provided for by Minnesota Statute.

For these reasons, we request the EQB designate the MDNR and MPCA as co-lead responsible governmental units for preparation of the EIS for the Sandpiper and Line 3 pipelines.

If you have any questions, please contact Kathy Hollander at [Kathy@MN350.org](mailto:Kathy@MN350.org).

Alliance for Sustainability

Minnesota River Valley Audubon  
Chapter

Center for Biological Diversity

MN350

Izaak Walton League of America  
Minnesota Division

MPIRG

Mankato Area Environmentalists

Save Our Sky Blue Waters

Minnesota Conservation Federation

Sierra Club - North Star Chapter

Cc: Will Seuffert, Executive Director, EQB

**From:** [Seuffert, Will \(MPCA\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** FW: please change sandpiper/line 3 rgu to mpca/mdnr  
**Date:** Friday, April 22, 2016 12:26:23 PM

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**From:** Mark Herwig [mailto:mefsherwig@yahoo.com]  
**Sent:** Thursday, April 21, 2016 4:39 PM  
**To:** Seuffert, Will (MPCA)  
**Subject:** please change sandpiper/line 3 rgu to mpca/mdnr

Please change the sandpiper/line 3 rgu from mdoc to mdnr/mpac.....here's why:

The permitting process so far under mdoc has been bush league....it shows how clearly unsuited for the task the DOC is. Environmental studies should be done by environmental agencies, and that someone at the state of MN needs to step up and start taking these pipelines seriously. The public and others have a lack of confidence in DOC.....this process must be professional and above reproach lest it end up in court again.

MDOC exhibits a blatant refusals to consult with tribal governments who will be impacted.... the enviro agencies have the capacity to actually navigate the Native issues in the case....they are the only ones that can deal appropriately with the federal agencies, the tribes, the treaty commissions that co-manage resources, etc. DOC is out of its league. They do not know what they do not know! Already, EPA is hovering over all of this flawed process and will likely intervene.

A retired DNR hydrologist, for example, said in 35 years working for the DNR and testifying in front of countless different agencies and courts, he never once saw the level of collusion between industry and government that he saw in Enbridge/DOC hearings!!! The story of Deborah Pile and the groundwater susceptibility analysis of the Pine River watershed, which was purposefully excluded from the DOC's original environmental assessment, along with several other reports containing detailed, locally-collected scientific data that clearly would have been useful in assessing the potential pipeline.

MDOC has treated this as a private project, but in fact it is a public project that will greatly impact the environment.....the MDOC, by its nature, is incapable of doing an EIS on this proposed project.....give it to mdnr/mpca since they are designed to do such studies.

Thank you, Mark Herwig (my land is on the sandpiper/line 3 proposed route....and no doubt other pipes to come ), 1958 florence st., white bear lake, mn 55110

**(I tried sending this to the designated email, but it won't go through)**

**From:** [Seuffert, Will \(MPCA\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** FW: Please make the MDNR, MPCA the Sandpiper RGU  
**Date:** Wednesday, April 13, 2016 9:36:36 PM

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**From:** Mark Herwig [mefsherwig@yahoo.com]  
**Sent:** Wednesday, April 13, 2016 10:22 AM  
**To:** Seuffert, Will (MPCA)  
**Subject:** Please make the MDNR, MPCA the Sandpiper RGU

**Dear folks,** the MDOC lacks the neutrality, experience, and scientific expertise necessary to create an honest process and a competent EIS on the sandpiper proposal. Please make the MPCA and the DNR the RGU for scoping, monitoring and supervising this "first ever" EIS on an oil pipeline. ....MDOC are business types more capable of dealing with profit/loss calculations than protecting our precious headwaters region's natural resources.

I support Friends of the Headwaters request for a panel of experts to advise the responsible government unit (RGU). We have also advocated for a revised Memo of Understanding, in an effort to ensure that Minnesota's lead environmental agencies are not marginalized by Enbridge preferences that the Department of Commerce wants to pretend are DOC prerogatives.

Sincerely, Mark Herwig (a landowner on the proposed sandpiper pipeline), 1958 Florence St., White Bear Lake, MN 55110.

**From:** [\\*EOB\\_Pipelines](#)  
**To:** [Tegdesch, Elizabeth \(MPCA\)](#)  
**Subject:** FW: Honor the Earth comments on request to change RGU  
**Date:** Wednesday, May 04, 2016 3:09:01 PM  
**Attachments:** [HTE comments EOB change RGU.pdf](#)  
[Exhibit H - WE Reply to Enbridge at PUC L3R dated 2-10-2016.pdf](#)  
[Exhibit G - WE Itr2 DOC Bill Grant Re transparency 2-8-2016 \(1\).pdf](#)  
[Exhibit F - DNR Itr2 PUC Re WEB 1855 intervene 2-5-2016 \(1\).pdf](#)  
[Exhibit E - USGS 1996 Hydrological Biochemical Research Shingobee Headwaters.pdf](#)  
[Exhibit D - MPCA Itr2 DOC Scott Ek Re Line 3 R 5-2-2016.pdf](#)  
[Exhibit C - WE and ML letters to PUC June2015.pdf](#)  
[Exhibit B - EPA Region 5 EIS Itr2 USACE WisDNR n Mn DOC 2-25-2016 DOC date stamp 3-1-2016.pdf](#)  
[Exhibit A - HTE Itr2 EPA R5 Re Line 3R Sandpiper EIS 4-18-2016 \(2\).pdf](#)

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**From:** Winona Laduke [mailto:winonaladuke1@gmail.com]  
**Sent:** Monday, May 02, 2016 4:15 PM  
**To:** \*EOB\_Pipelines  
**Cc:** Thane Maxwell; Tara Houska; Frank Bibeau; Alondra Cano  
**Subject:** Honor the Earth comments on request to change RGU

Aaniin,

Please find attached Honor the Earth's comments in support of the request to change the RGU for the Sandpiper/Line 3 EIS. Please let us know if there is anything else we can provide.

Miigwech,

Winona LaDuke  
Executive Director, Honor the Earth  
Website: [www.honorearth.org](http://www.honorearth.org)  
Facebook: [@Winona LaDuke Honor the Earth](#)  
Twitter: [@HonorTheEarth](#)  
Youtube: [Honor the Earth](#)



**HONOR THE EARTH** PO Box 63 • Callaway, MN 56521 • 218-375-3200 • [info@honorearth.org](mailto:info@honorearth.org)

April 18, 2016

Ken Westlake EPA Region 5  
Office of Enforcement and Compliance  
77 W. Jackson Blvd.  
Chicago, IL 60604–3590

Re: Environmental impact reviews of Enbridge's  
Proposed Line 3 Replacement Pipeline and  
Proposed Sandpiper Pipeline

Dear Mr. Westlake,

First let me say Miigwech (thank you) for Director Alan Walt's letter of assurance dated February 25, 2016, and we look forward to working with you and Region 5 on the environmental impact statement (EIS) processes. *Honor the Earth* is a native lead, environmental organization based on White Earth reservation in northern Minnesota, relying on harvesting traditional foods like wild rice from our pristine, freshwater environment along the proposed routes for both pipelines.

We have been working with several tribal governments and environmental organizations in the struggle for environmental justice and protection of tribal interests, including treaty protected resources and usufructuary rights in the ceded territories at the Minnesota Public Utilities Commission (PUC) for the past two years. I have also been working with Danny Gogal of EPA Environmental Justice on assessing specific environmental concerns along Enbridge's proposed pipeline corridor. We believe it is very important for U.S. Fish and Wildlife (US/FWS), US Army Corps of Engineers (USACE) and the EPA to be assuring performance of trust responsibilities as described in the February 25 EPA letter and the EIS expectations outlined for Minnesota.

The real model for environmental protection of Chippewa usufructuary property

Letter to Secretary Jewell of DOI & AS-IA Washburn (BIA)  
RE: EPA Trust and Treaty responsibilities and  
Enbridge Sandpiper Pipeline, page 1.

has already been developed by the Corps of Engineers with their 1997 *Issue Paper* with regard to Crandon mine and Mole Lake. (See Exhibit A). As the *Issue Paper* is now 20 years old and preceded the 1999 Minnesota v Mille Lacs Supreme Court decision, it is essential to update and upgrade the *Issue Paper* with regard to the present, proposed pipelines crossing the headwaters of 3 of 4 of the major watersheds of North America.

It is also essential that the Chippewa bands participate in the development of the 2016 revisions to the *Issue Paper* on trust responsibility and protection of natural resources. *Honor the Earth* has previously argued for inclusion of the *Issue Paper* in the DOC environmental analysis, which to date, has been rejected by the DOC and ALJ and ultimately by the PUC in granting the certificate of need for the sandpiper pipeline.

The Environmental Quality Board (EQB) for the state of Minnesota is presently considering changes in the Responsible Governmental Unit (RGU) from DOC to the Minnesota Pollution Control Agency (MPCA) or Department of Natural Resources (DNR). (See EQB correspondence Exhibits B, C, D and E). *Honor the Earth* supports the change of RGU for a variety of reasons as follows:

1. The Department of Commerce (DOC) does not regulate pipelines or crude oil and DOC lacks the requisite agency skills, knowledge and abilities to be RGU and to meet EPA's understanding and expectations for an EIS to consider impacts to a wide range of natural resources and our traditional, cultural environment. DOC thinks tribal consultation is being permitted to participate in the PUC process, which is really only comment and suggestion, not consultation.

2. ***Because the DOC does not know what it does not know***, the environmental assessment which the PUC relied upon, had to be appealed and was subsequently reversed by the Minnesota Court of Appeals, which reversed the PUC granted certificate of need (CN) and required an EIS prior to the granting the CN. The Minnesota Supreme Court denied appeal requests by the PUC and Enbridge.

Looking back to the May 2, 2015 letter to Scott Ek of DOC regarding Line 3 Replacement, the MPCA wrote that it understood that

Enbridge's preferred route is proposed to co-locate the Line 3

Honor the Earth letter to Ken Westlake  
EPA Region 5, Office of Enforcement and Compliance Assurance  
Re: Environmental reviews of Line 3R and Sandpiper pipelines  
April 18, 2016, page 2.



Replacement on the same route as its proposed Sandpiper pipeline project. Although the MPCA's environmental concerns with the Sandpiper project are known, it must be noted here that the discussion of alternatives in the Line 3 Replacement applications does not address those concerns or consider any system or route alternatives that were brought forward in the Sandpiper proceedings. Nor do the applications appear to provide adequate basis for selection of a southern route alternative over a northern route alternative, such as rebuilding of the Line 3 Replacement in its current location. (See Exhibit F, also part of the EQB packet 4-20-2016 pp 139 et seq (of 384 pages) available on line at <https://www.eqb.state.mn.us/sites/default/files/documents/EQB%20Board%20Packet%204-20-16.pdf>).

The MPCA letter continued by warning DOC that

It does not appear that Enbridge evaluated any system alternatives or route alternatives that have been included in the Sandpiper docket. Sandpiper System Alternative 3 and System Alternative 3 Modified (a route alternative included by the Commission in the sandpiper route preceding) are given minimal to no consideration. Despite Enbridge's awareness of the significant environmental concerns expressed by state agencies and interested parties in the Sandpiper proceedings, and the alternatives offered in those dockets, the Line 3 Replacement applications do not address these alternatives.

The applications discuss three options, the preferred route and two alternatives involving replacement along or parallel to the existing Line 3, i.e., rebuilding Line 3 in place. However, the applications do not adequately discuss the alternatives for rebuilding Line 3 in place or the resulting impact to environmental values of all three options. The applications also do not provide sufficient information for comparison and inform consideration of the options. (Id.)

The PUC, which relies upon the DOC to understand and perform the necessary and required agency procedural and environmental undertakings, failed to understand the MPCA warnings.

Honor the Earth letter to Ken Westlake  
EPA Region 5, Office of Enforcement and Compliance Assurance  
Re: Environmental reviews of Line 3R and Sandpiper pipelines  
April 18, 2016, page 3.

3. The DOC *Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings* issued April 11, 2016, has 13 meetings scheduled along the Enbridge preferred, new construction corridor from Clearbrook to Park Rapids to Superior, Wisconsin, with ZERO public meetings about rebuilding Line 3 pipeline in place or abandonment along the US Highway 2 corridor from Bemidji Minnesota to Superior Wisconsin (approximately 150 miles). (See Exhibit G).

In fact, the word abandonment does not appear in the DOC Notice. Enbridge wants to make more, new, future, inevitable environmental pipeline problems in Minnesota without cleaning up the old one (rebuild Line 3 in place or remove) first, and DOC is helping them with Minnesota law and avoiding replacement or abandonment. Both the MPCA and DNR have common environmental protection obligations and spill response and clean-up, DOC does not.

4. Mn DNR already has an existing natural resources co-management relationship with the 1837 and 1854 Chippewa ceded territories, and clearly understands the valuable resources at stake with the recognition of the same co-management rights with the Chippewa in the 1855 territory. This understanding is clear because the DNR specifically sent a letter to the PUC asking the PUC not to allow White Earth reservation to intervene and participate in the PUC process for Line 3, based on usufructuary property rights in the 1855 ceded territory by letter dated February 5, 2016, and posted on the Line 3 edocket. (See Exhibit H).

The United States of America as the other party to the treaties with the Chippewa already understands that the Mississippi bands were signatories to all three treaties in what is now Minnesota, as well as the 1842 Treaty with the Chippewa in Wisconsin, where Mole Lake and Crandon mine spawned the 1997 USACE *Issue Paper* EIS trust responsibility obligations.

5. Finally, DOC received the EPA Region 5 letter dated February 25 in the mail room on March 1, 2016. (See Exhibit I). It looks like DOC intentionally delayed posting the EPA letter to prevent its publication to the tribal and environmental parties on the edockets for both pipeline projects, for which the PUC had hearings on March 24, 2016, (the DOC intentionally waited until March 28 to post the EPA letter publicly). The DOC was well aware that White Earth reservation had filed a

Honor the Earth letter to Ken Westlake  
 EPA Region 5, Office of Enforcement and Compliance Assurance  
 Re: Environmental reviews of Line 3R and Sandpiper pipelines  
 April 18, 2016, page 4.

motion to be a cooperating agency on the EIS in December 2015. The first order of business for the PUC on March 24 was to deny the motion by White Earth reservation, because the PUC had no idea about the EPA Region 5 letter having been sent to DOC a month before.

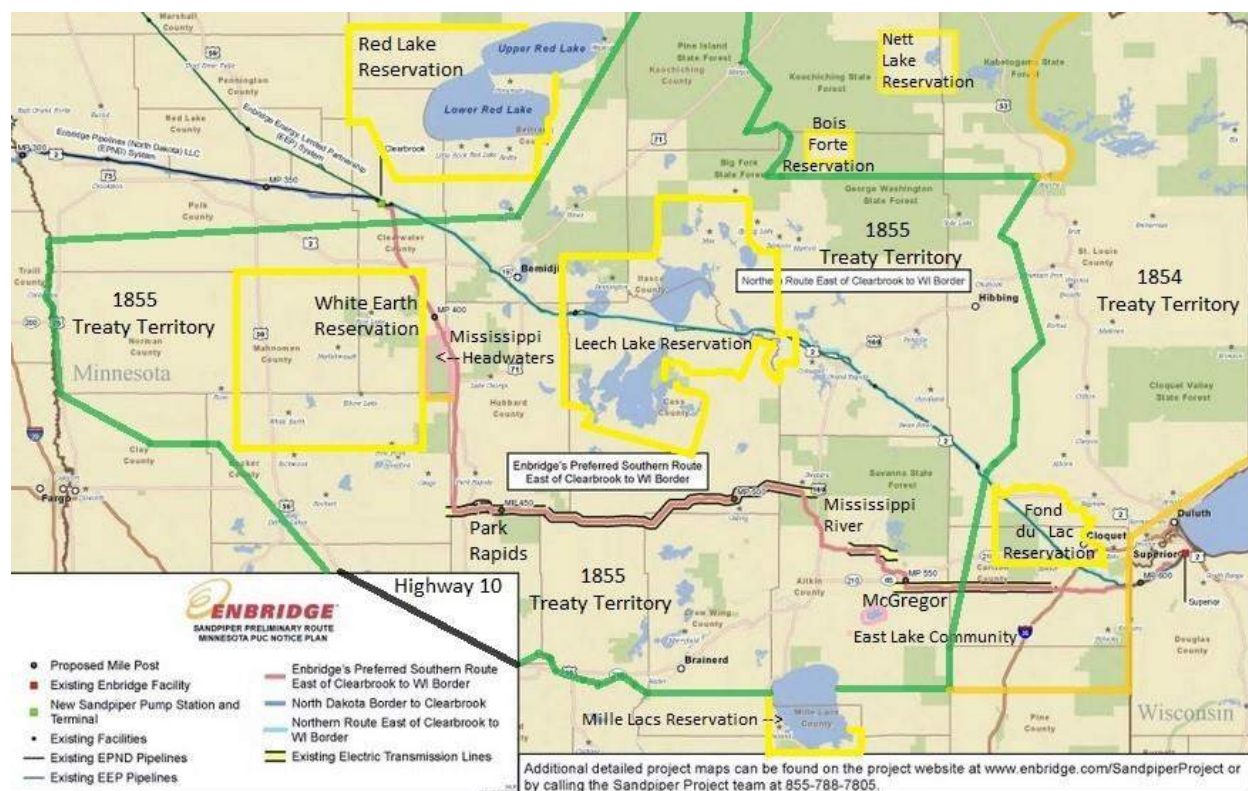


Figure 1. Pictured above in blue is the US Hwy 2 existing mainline pipeline corridor, with original reservations boundaries in yellow and 1855 territory in green.

We know that the U.S. State Department is doing a Supplemental EIS (SEIS) with regard to the Clipper pipeline border crossing (See Exhibit J), which should be combined as a part of this EIS as it will continue the transport of Canadian tar sands which the US Department of Defense has already identified as one of the major contributors to climate change, which is a number one priority concern for DOD and national security.

*Honor the Earth* will also be filing this letter and attachments with the Environmental Quality Board as part of public comments about changing the RGU from DOC to MPCA with the DNR for the EIS, if not the entire remaining certificate of need and routing permit processes for the proposed pipelines.

Honor the Earth letter to Ken Westlake  
 EPA Region 5, Office of Enforcement and Compliance Assurance  
 Re: Environmental reviews of Line 3R and Sandpiper pipelines  
 April 18, 2016, page 5.

If I can be of further assistance with helping identify public meeting places between Bemidji and Duluth for pipeline rebuild in place or abandonment, if not right at Leech Lake reservation, Grand Rapids, Minnesota (which had the largest land oil spill in the United States prior to Kalamazoo) and Floodwood which just experienced a pipeline spill of nearly 30,000 gallons dyed water September 24, 2015, from a pressure test of the 26-inch-diameter Line 2B that was built in 1954 and carries light crude oil from western Alberta to Superior. We are facing several aging pipelines that, if they are outdated and actually needed, Enbridge should be rebuilding in place, instead of abandoning pipelines with expectations of new toxic corridor, environmental time bombs for our natural resources and freshwater.

Because these are important issues and I am personally aware of the difficulty DOC has in performing its duties and understanding obligations for tribal interests, the EPA should consider going forward with a joint federal state EIS if the EQB does not change the RGU. Miigwech.

Sincerely,



Winona LaDuke  
Executive Director

#### Attachments

cc: Danny Gogal, EPA Environmental Justice  
Stacy Jensen, Acting Chief, Regulatory Branch USACE St. Paul  
Steven Clark, Acting Chair, White Earth Reservation  
Carrie Jones, Chair, Leech Lake Reservation  
Melanie Benjamin, Chair, Mille Lacs Reservation  
Wally DuPuis, Acting Chair, Fond du Lac  
Walt Ford, USFWS Midwest Tribal Liaison, Rice Lake Refuge  
William Baer, USACE, Bemidji

Honor the Earth letter to Ken Westlake  
EPA Region 5, Office of Enforcement and Compliance Assurance  
Re: Environmental reviews of Line 3R and Sandpiper pipelines  
April 18, 2016, page 6.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5  
 77 WEST JACKSON BOULEVARD  
 CHICAGO, IL 60604-3590

FEB 25 2016

REPLY TO THE ATTENTION OF:

Stacey Jensen  
 Acting Chief, Regulatory Branch  
 St. Paul District  
 U.S. Army Corps of Engineers  
 180 Fifth Street East, Suite 700  
 St. Paul, Minnesota 55101

John Wachtler  
 Energy Environmental Review and Analysis Unit  
 Minnesota Department of Commerce  
 85 Seventh Place East, Suite 500  
 St. Paul, Minnesota 55101

Jim Pardee  
 Wisconsin Environmental Policy Act Coordinator  
 Bureau of Environmental Analysis and Sustainability  
 Wisconsin Department of Natural Resources  
 101 South Webster Street  
 P.O. Box 7921  
 Madison, Wisconsin 53707



RE: Environmental impact reviews of proposed Enbridge Line 3 Replacement Pipeline and proposed Sandpiper Pipeline

Dear Ms. Jensen, Mr. Wachtler, and Mr. Pardee:

As you know, the Enbridge Company has proposed installing a new crude oil pipeline to replace its existing Line 3 Pipeline, following the existing Line 3 route from Hardisty Alberta, Canada to Clearbrook, Minnesota and co-located with a portion of the proposed Sandpiper Pipeline from Clearbrook to Superior. The proposed Sandpiper Pipeline would carry Williston Basin crude oil from Tioga, North Dakota, to the Enbridge Terminal in Superior via Clearbrook. Routing for the Sandpiper Pipeline in North Dakota has already been approved by the North Dakota Public Service Commission.

Several tribal governments and environmental organizations have called on the U.S. Army Corps of Engineers (Corps) and the affected states to undertake a joint Federal-State Environmental

Impact Statement (EIS) on the Sandpiper project. EPA has discussed the review process with your agencies in light of these requests, and the purpose of this letter is to state our understanding and expectations based on these discussions.

We understand that decisions on certificate of need and routing in Minnesota rest with the Minnesota Public Utility Commission, to be informed by a State EIS being undertaken by Minnesota Department of Commerce (MDOC). The Minnesota State EIS will consider: 1) multiple route alternatives; 2) impacts to a wide range of resources in the natural and human environment, including resources of interest to tribes; and 3) spill modeling at multiple proposed stream crossing locations. We understand that MDOC will consult with affected tribes during the development of the State EIS.

The Wisconsin Department of Natural Resources (WDNR) is preparing a State EIS to inform permit decisions that will determine the route. We understand that this EIS will also cover a broad range of potential impacts to resources in the natural and human environment, and that WDNR will engage with affected tribes in Wisconsin.

We also understand that the Corps intends to prepare an environmental assessment (EA) that will focus on impacts to jurisdictional Waters of the United States (WOUS) and will inform its permit decision under Section 404 of the Clean Water Act. The Corps will prepare this EA once Minnesota and Wisconsin have made routing decisions; will consider the analyses from the State EISs as part of its review; and is already coordinating with MDOC and WDNR. We understand that the Corps has initiated contact with several Chippewa bands near the Sandpiper project, and is also reaching out to additional tribes with historic ties to the area in compliance with the National Historic Preservation Act. We expect that the Corps will continue to engage with tribes on a government-to-government basis, consulting with them as the NEPA process moves forward, to ensure that tribal interests including treaty rights in ceded territory are fully considered. The Corps is also coordinating with the U.S. Fish and Wildlife Service to assure compliance with the Endangered Species Act. The Corps has indicated that, if the information and analysis in its EA leads to a determination that Enbridge's proposed activities in WOUS warrant preparation of a Federal EIS, it will prepare an EIS before its permit decision.

EPA has reviewed the scopes of the state EISs under development respectively by MDOC and WDNR and believes they will address the relevant issues. We expect these state EISs and the Corps EA will consider impacts to resources of interest to tribes and that the affected tribes will continue to be consulted as these documents are prepared. We also expect that the Corps EA will evaluate and address environmental justice consistent with Executive Order 12,898; we encourage state consideration of environmental justice in their reviews.

EPA will review and comment on the MDOC and WDNR state EISs when they are issued for public comment. We will also review and comment on the Corps EA. Please provide these documents to Ken Westlake of my staff when they are available. At this time we are not advising the Corps, MDOC, and WDNR to prepare a joint Federal/state EIS. We will continue to monitor the situation and coordinate, as appropriate, with the Corps, the states, and tribes on permits related to this project within EPA's legal responsibilities.

If you have questions or comments, please contact me or Ken Westlake of my staff at 312-886-2910 and westlake.kenneth@epa.gov.

Sincerely,



Alan Walts, Director  
Office of Enforcement and Compliance Assurance

Cc:

Melanie Benjamin, Chief Executive Officer  
Mille Lacs Band of Minnesota Chippewa  
Mille Lacs Government Center  
43408 Oodena Drive  
Onamia, Minnesota 56359

Erma Vizenor, Chairwoman  
White Earth Band of Minnesota Chippewa  
24246 Crane Road  
White Earth, Minnesota 56591

Carri Jones, Chairwoman  
Leech Lake Band of Minnesota Chippewa  
190 Salistar Drive, NW  
Cass Lake, Minnesota 56633

Wally Dupuis, Chairman  
Fond du Lac Band of Minnesota Chippewa  
1720 Big Lake Road  
Cloquet, Minnesota 55720



**MILLE LACS BAND OF OJIBWE**  
Executive Branch of Tribal Government

May 27, 2015

**RECEIVED**  
MAY 28 2015  
MINNESOTA PUBLIC  
UTILITIES COMMISSION

Beverly Jones Heydinger, Chair  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, MN 55101-2147

Dear Chairwoman Heydinger,

It is my understanding that the Public Utilities Commission (PUC) is scheduled to vote on June 5, 2015, on whether the PUC should adopt the administrative law judge's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation, and whether it should authorize recommencement of the route permit application proceedings.

I am writing to respectfully request that the Public Utilities Commission postpone its vote on this matter until it has had the opportunity to engage in appropriate government-to-government consultation with the American Indian tribal governments that will be most impacted by a potential spill. To date, government-to-government consultation required between State agencies and Indian tribes pursuant to Governor Dayton's Executive Order 13-10 has not occurred on this matter, nor was there any mechanism for consultation in Administrative Law Judge Lipman's hearing process. There has been no consultation between the Mille Lacs Band of Ojibwe (as well as the other impacted tribes) and the PUC, nor has Enbridge consulted with the Mille Lacs Band of Ojibwe.

The Sandpiper Pipeline matter is of grave concern to the Mille Lacs Band of Ojibwe. This pipeline is proposed along a route that has great potential to result in an environmental impact on lands, waters and resources on or near the East Lake Community of the Mille Lacs Reservation. Our wild rice, in particular, is at severe risk of pipeline activity or construction that impacts the Rice Lake or Big Sandy Lake Watersheds.

The Minnesota Public Utilities Commission has held a series of hearings taking testimony from the public and local governments. However, the Mille Lacs Band notes that none of the hearings were held on Indian reservations, despite tribal requests that at least one

**DISTRICT I**

43408 Oodena Drive • Onamia, MN 56359  
(320) 532-1181 • Fax (320) 532-4209

**DISTRICT II**

36666 State Highway 65 • McGregor, MN 55760  
(218) 768-3311 • Fax (218) 768-3903

**DISTRICT IIA**

2605 Chiminiminy Drive • Isle, MN 56342  
(320) 676-1102 • Fax (320) 676-3432

**DISTRICT III**

45749 Grace Lake Road • Sandstone, MN 55072  
(320) 384-6240 • Fax (320) 384-6190

**URBAN OFFICE**

1433 E Franklin Avenue Ste. 7c • Minneapolis, MN 55404  
(612) 872-1424 • Fax (612) 872-1257



hearing be located on an Indian reservation to afford tribal members an opportunity to engage in the hearing process.

As a sovereign tribal government, the Mille Lacs Band of Ojibwe is holding a Public Hearing in our East Lake Community Center of District II of the Mille Lacs Reservation on June 5, 2015, at 10:00 a.m. The purpose of this hearing is to collect information from Band Members and experts regarding legal and environmental concerns. I ask that you postpone the PUC's scheduled vote until after June 5 and after the PUC has had an opportunity to study our hearing report.

Attorney Nicholas Targ will serve as our Hearing Officer and compile a written report. Mr. Targ is the former Counsel and Associate Director to EPA's Office of Environmental Justice. We expect that the hearing report will reflect valuable legal and environmental information that the PUC will benefit from taking into consideration prior to making any final decisions regarding the Sandpiper. We invite and encourage Members of the PUC to attend this hearing.

The purpose of this hearing is to collect information from Band Members and experts regarding:

- (1) Concerns regarding oil spills and the potential risks to surface and ground water on or near the East Lake Community and lands held in federal trust status for the Mille Lacs Band of Ojibwe;
- (2) Concerns regarding the self-sufficiency of individual Band members and cultural practices, such as harvesting wild rice within the Big Sandy Lake and Rice Lake watersheds, including the Rice Lake National Wildlife Refuge;
- (3) The implications of the lack of consultation with the Mille Lacs Band of Ojibwe;
- (4) The legal implications of the lack of consultation between Enbridge and the Mille Lacs Band of Ojibwe's Tribal Historic Preservation Office (THPO) regarding to the identification of lands along the pipeline route related to their historical, archeological and cultural significance; and
- (5) The potential legal involvement of the federal government: First, whether the Department of the Interior is properly carrying out its Trust Responsibility with regard to federal and tribal land; Second, whether the Environmental Protection Agency (EPA) should conduct an Environmental Impact Statement (EIS) to assess the safety of the Sandpiper pipeline project to lands and waters important to Indian tribes and federal land; and Third, whether the U.S. Army Corp of Engineers (USACE) should conduct an EIS to assess the potential impact of the Sandpiper project to wetlands and waters under its jurisdiction.

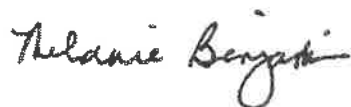
This hearing will be held pursuant to 4 MLBSA Section 12(a) (3), wherein the Chief Executive is authorized to hold hearings for the following purposes: To investigate and

inquire into matters affecting the general welfare of the Band or its organs of government. The hearing shall be held in accordance with MLBSA Section 13.

Respectfully, on behalf of the Mille Lacs Band of Ojibwe, I again urge you to postpone the PUC vote on this matter until such time as the PUC Members have an opportunity to consider the views of the Native Americans who will be most impacted by potential spills and have an opportunity to study the Band's report of this hearing, which we will provide to you immediately upon its completion.

Again, I encourage and warmly invite PUC Members to attend our hearing and hear the perspective of tribal members living along this proposed route as well as national experts. If you are able to attend, please contact Emily Johnson, of my office, at (218) 349-0233.

Sincerely,



Melanie Benjamin  
Chief Executive

cc: Commissioner Lange  
Commissioner Lipschultz  
Commissioner Tuma  
Commissioner Wergin  
Governor Mark Dayton  
Congressman Rick Nolan  
Senator Amy Klobuchar  
Senator Al Franken



## White Earth Reservation Tribal Council

P.O. Box 418  
 White Earth, Minnesota 56591  
 Tel. (218) 983-3285  
 Fax (218) 983-3641

CHAIRWOMAN  
 Erma J. Vizenor

June 1, 2015

SECRETARY-TREASURER  
 Tara Mason

Beverly Jones Heydinger, Chair  
 Minnesota Public Utilities Commission  
 121 7<sup>th</sup> Place East, Suite 350  
 Saint Paul, MN 55101-2147

DISTRICT I  
 Steven "Punky" Clark

DISTRICT II  
 Kathy Goodwin

Re: Certificate of Need for the Sandpiper Pipeline Project

DISTRICT III  
 Kenneth Bevins

Dear Chairwoman Heydinger:

The White Earth Band of Ojibwe requests that the Public Utilities Commission postpone its vote on whether to adopt Administrative Law Judge Eric Lipman's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation; and on whether to refer this matter for proceedings with respect to Enbridge's application for a route permit. The White Earth Band of Ojibwe believes that a postponement of this vote is necessary in order for the State of Minnesota to engage in government-to-government consultation with the White Earth Band of Ojibwe and the other Tribal Nations potentially impacted by the Sandpiper Pipeline project. To date, government-to-government consultation required between state agencies and Tribal Nations pursuant to Governor Dayton's Executive Order 13-10 has not occurred on this matter, nor was there any mechanism for consultation in the Administrative Hearing process on the Certificate of Need.

The White Earth Band of Ojibwe intervened in the permit proceedings regarding the Sandpiper Pipeline because of its concern that the project as proposed poses a significant risk to the environment on and near the White Earth Reservation, as well as within the 1855 treaty-ceded territory where White Earth members and other successors in interest to the signatories of the Treaty possess retained and reserved usufructuary use rights that are threatened by this project. The White Earth Band of Ojibwe has repeatedly noted its concern that the project as proposed poses a significant risk, in particular, to wild rice, a plant of supreme cultural significance to the people of White Earth and the other Ojibwe Tribes of Minnesota.

The White Earth Band of Ojibwe requested, and received assurances, that a public meeting would be held on the White Earth Reservation to permit its members to participate in the proceedings. None of the public hearings were held on White Earth. The White Earth Band of Ojibwe is holding a Public Hearing in the Rice Lake Community on June 4, 2015 at 5:00 p.m., the purpose of which is to collect information from White Earth members and experts regarding the proposed Sandpiper Pipeline. The Mille Lacs Band of Ojibwe will hold a Public Hearing in its East Lake Community Center on June 5, 2015 at 10:00 a.m. for the same purpose. The White Earth Band of Ojibwe requests that the Public Utilities Commission postpone its vote of June 5, 2015 until after the Commission has had an opportunity to review the hearing reports from these hearings.

The White Earth Band of Ojibwe expects that the hearing report will reflect valuable legal and environmental information that the Public Utilities Commission will benefit from prior to making any final decisions regarding the proposed Sandpiper Pipeline project. The White Earth Band of Ojibwe invites and encourages members of the Public Utilities Commission to attend the hearings on June 4 and June 5, 2015.

The purpose of the hearing is to collect information from White Earth Band Members and experts regarding:

- (1) Concerns regarding oil spills and the potential risks to surface and ground water on or near the White Earth Reservation, lands held in federal trust status for the White Earth Band of Ojibwe, and lands within the 1855 Treaty-ceded territory;
- (2) Concerns regarding the self-sufficiency of individual Band members and cultural practices, such as harvesting wild rice within the White Earth Reservation and the 1855 Treaty-ceded territory;
- (3) The implications of the lack of consultation with the White Earth Band of Ojibwe;
- (4) The legal implications of the lack of consultation between Enbridge and the White Earth Band of Ojibwe's Historic Preservation Office regarding the identification of lands along the pipeline route of historic, archeological, and cultural significance;
- (5) The potential legal involvement of the Federal Government: First, whether the Department of the Interior is properly carrying out its trust responsibility with regard to federal and tribal land; Second, whether the Environmental Protection Agency should conduct an Environmental Impact Statement (EIS) to assess the safety of the Sandpiper Pipeline project to lands and waters important to Tribal Nations and federal land; and Third, whether the U.S. Army Corps of Engineers should conduct an EIS to assess the potential impact of the Sandpiper Pipeline project to wetlands and waters under its jurisdiction.

Respectfully, the White Earth Band of Ojibwe again urges the Public Utilities Commission to postpone its vote scheduled on the Sandpiper Pipeline project scheduled for June 5, 2015 until such time as the members of the Public Utilities Commission have had an opportunity to consider the views of the Native Americans who will be most impacted by potential spills and

the construction of this project, and have had an opportunity to study the report on the hearing on June 4, 2015, which will be provided to the Commission immediately upon completion.

Again, the White Earth Band of Ojibwe encourages and warmly invites members of the Public Utilities Commission to attend the hearing on June 4, 2015 and hear the perspective of tribal members potentially impacted by the proposed route, as well as national experts.

Sincerely,



Erma J. Vizenor  
Chairwoman

cc: Commissioner Lange  
Commissioner Lipschultz  
Commissioner Tuma  
Commissioner Wergin  
Governor Mark Dayton  
Congressman Collin Peterson  
Senator Amy Klobuchar  
Senator Al Franken



# Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

586

May 12, 2015

Mr. Scott Ek  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and a Pipeline Routing Permit for the Line 3 Pipeline Replacement Project in Minnesota  
PUC Docket No. PL-9/CN-14-916 (Certificate of Need)  
PL-9/PPL-15-137 (Pipeline Routing Permit)

Dear Mr. Ek:

The Minnesota Pollution Control Agency (MPCA) offers these comments on the Certificate of Need (CON) application and the Pipeline Routing Permit application filed by the Enbridge Energy, Limited Partnership (Enbridge) in these dockets ("Line 3 Replacement" project).

The Minnesota Public Utilities Commission (PUC) has requested comments on three topics concerning the completeness of the Enbridge Line 3 Replacement applications:

1. Does the CON application contain the information required under Minn. R. 7853.0220 to 7853.0260 and Minn. R. 7853.0500 to 7853.0640?
2. Does the pipeline route permit application contain the information required under Minn. R. 7852.2100 to 7852.3100?
3. Are there any contested issues of fact with respect to the representations made in the applications?

The MPCA understands that Enbridge's preferred route is proposed to co-locate the Line 3 Replacement on the same route as its proposed Sandpiper pipeline project. Although the MPCA's environmental concerns with the Sandpiper project are known, it must be noted here that the discussion of alternatives in the Line 3 Replacement applications does not address those concerns or consider any system or route alternatives that were brought forward in the Sandpiper proceedings. Nor do the applications appear to provide adequate basis for selection of a southern route alternative over a northern route alternative, such as rebuilding of the Line 3 Replacement in its current location.

Mr. Scott Ek  
Page 2  
May 12, 2015

The MPCA contests both the adequacy of the environmental analysis and the lack of consideration of reasonable alternatives in the applications.<sup>1</sup>

**Failure to address alternatives and evaluate environmental impacts.** Enbridge intends to locate the Line 3 Replacement pipeline adjacent to the Sandpiper pipeline between Clearbrook and Superior. The MPCA has filed comments raising environmental concerns with this route in the Sandpiper dockets (see Dockets 13-473 and 13-474). Since the Line 3 Replacement project follows the same proposed route, it raises substantially the same concerns that the MPCA expressed in Sandpiper, but the applications do not address those concerns.

It does not appear that Enbridge evaluated any system alternatives or route alternatives that have been included in the Sandpiper docket. Sandpiper System Alternative 3 and System Alternative 3 Modified (a route alternative included by the Commission in the Sandpiper route proceeding) are given minimal to no consideration.<sup>2</sup> Despite Enbridge's awareness of the significant environmental concerns expressed by state agencies and interested parties in the Sandpiper proceedings, and the alternatives offered in those dockets, the Line 3 Replacement applications do not address these alternatives.

The applications discuss three options, the preferred route and two alternatives involving replacement along or parallel to the existing Line 3, i.e., rebuilding Line 3 in place. However, the applications do not adequately discuss the alternatives for rebuilding Line 3 in place or the resulting impacts to environmental values of all three options. The applications also do not provide sufficient information for comparison and informed consideration of the options.

**Need for comprehensive environmental analysis of cumulative environmental effects.** The proposal to place Line 3 next to Sandpiper increases the potential to impact some of Minnesota's most pristine natural resources. The Commission has authority and responsibility under the Minnesota Environmental Policy Act, Minn. Stat. ch. 116D, to make a detailed evaluation of the potentially significant environmental effects, including cumulative potential effects, alternatives, and measures that would avoid or mitigate the potential environmental harm from this project. The possibility of simultaneous construction is not addressed, nor is the effect of continuous construction of two pipelines over extended construction seasons.

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<sup>1</sup> The MPCA comments are generally directed to: the adequacy of Enbridge's CON application under Minn. R. 7853.0250.A (relating to the socially beneficial uses of the output of the project, including "its uses to protect or enhance environmental quality"); Rule 7853.0540 Alternatives; Rule 7853.0600 Information Required (environmental data); Rule 7853.0630, subp. 3 and 4 (safeguards); Rule 7852.2600, (route alternatives and description of environment); Rule 7852.2700 (environmental impact of preferred route); Rule 7852.3100 (consideration of alternative routes); and the sufficiency of the application for purposes of a detailed evaluation of the potentially significant environmental effects under the Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D.

<sup>2</sup> The MPCA and MDNR have provided extensive environmental information on SA-3M as an alternative to the Applicant's route. (See MPCA's Oct. 29, 2014 comment identifying a specific route for SA-3M, and MDNR's Jan. 23, 2014 comment letter).

Mr. Scott Ek  
Page 3  
May 12, 2015

Section 7.1.3 of the route application (Impact Calculations) states that calculations are based on an assumption that the Sandpiper pipeline will be constructed first. Timing of the construction of both projects is important. Construction of both lines could begin in 2016, yet the possibility and consequences of simultaneous construction are not addressed. Construction of the two projects in the same corridor may well result in greater impacts to surrounding terrain and water bodies than would occur if one project were built after another, because staging, spoils placement, and work space could not fully use the corridor. The discussion of project impacts should address the potential of concurrent construction impacts and the effects of extended construction of two projects in the same corridor on human, natural and environmental resources. The absence of that analysis in this section contributes to an inadequate analysis of likely site conditions and of the anticipated construction activity sequence.

**Response on spill analysis.** The applications do not have a sufficiently detailed analysis of the effects of a potentially catastrophic failure. In the introduction to section 7.0 of the route application, addressing the environmental impact of the preferred route, Enbridge makes the following statement:

The Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Natural Resources (MNDNR) have expressed concern with regard to the potential impacts of a catastrophic oil spill from the Project on environmental resources. An overall incident frequency was developed for the Keystone XL Project<sup>3</sup>, which is also designed of x70 steel pipe. Based on these statistics, it is highly unlikely that a spill or leak will occur along any given small section of the pipeline. Therefore potential impacts from a theoretical oil release are not identified in Section 7.0 due to the extremely low frequency and many assumptions that would first be necessary to adequately quantify how a leak would affect the environment. Enbridge will continue to work with the applicable agencies regarding leak prevention measures and emergency response.

While the MPCA agrees that it may be unlikely for a spill to occur at "any given small section of the pipeline," the applications do not adequately discuss potential environmental impacts such as what would occur to surface water, drinking water, human health, terrestrial wildlife, aquatic wildlife, vegetation, soils, and other resources in the event of a spill, as required by Rule 7852.2700. It is reasonable to anticipate that a leak or spill will occur at some point during the operational life of the pipeline. The applications should address the potential impacts that a significant spill would have on the various types of terrain and aquatic resources along the project route.

To summarize, the MPCA believes that information minimally necessary for any meaningful assessment and comparison of potential environmental impacts under the criteria of PUC rules and MEPA are missing from Enbridge's current applications.

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<sup>3</sup> The MPCA notes that the Executive Summary of the Final Supplemental Environmental Impact Statement for the Keystone XL project (Page 30), states that the risk of spills and leaks represents the "greatest potential threat to water and aquatic resources."



Mr. Scott Ek  
Page 4  
May 12, 2015

Thank you for consideration of these comments.

Sincerely,



William Sierks, Manager  
Environment & Energy Section  
Resource Management & Assistance Division

WS:bt

# HYDROLOGICAL AND BIOGEOCHEMICAL RESEARCH IN THE SHINGOBEE RIVER HEADWATERS AREA, NORTH-CENTRAL MINNESOTA

U.S. GEOLOGICAL SURVEY  
Water-Resources Investigations Report 96-4215





**Vern Peterson**

---

**From:** "Rosenberry, Donald" <rosenber@usgs.gov>  
**To:** "Vern Peterson" <marylake@unitelc.com>  
**Sent:** Monday, August 11, 2014 12:55 PM  
**Attach:** Delin etal USGS-FS98.pdf; Delin&Herkeletrath GWM&R14.pdf  
**Subject:** Re: Vern Peterson

Vern,

It was great to talk to you this morning after quite a few years. I'm glad all's well (except for the silt in the lake) up your way. As for the proposed pipeline, attached are two papers that you might find useful. The paper published in 1998 gives a nice overview of the oil spill, cleanup, and evolution of the oil plume in the aquifer. The 2014 paper talks more about removing oil with a shallow groundwater pump. It is a bit more technical but it might be useful nonetheless.

As for aquifers in the area, an unconfined "water-table" aquifer extends beneath just about all of Hubbard County. This would be the first aquifer to be contaminated by any oil spill and this is the type of aquifer that is being monitored at the Bemidji oil-spill study site. Most private water-supply wells are installed in sands that are beneath the shallow unconfined aquifer. The well screen and surrounding sediments from which groundwater is pumped are often separated from the shallow aquifer by one or more layers of silt or clay that would prevent or greatly slow movement of oil to a pumping well, assuming that the well was drilled and completed correctly. Unfortunately, some wells are not sealed very well and they can allow movement of shallow, contaminated water down to a well screen when the well is being pumped. Once oil gets beneath a confining layer and into the deeper sediments it is much more difficult and sometimes virtually impossible to remove.

Don

On Mon, Aug 11, 2014 at 9:37 AM, Vern Peterson <[marylake@unitelc.com](mailto:marylake@unitelc.com)> wrote:

Don, I don't think I got my e-mail in correctly [marylake@unitelc.com](mailto:marylake@unitelc.com) This is correct. Vern Peterson

--

Donald Rosenberry  
U.S. Geological Survey  
Box 25046, MS 413  
Denver, CO 80225-0046  
303-236-4990  
303-704-6588 cell  
[rosenber@usgs.gov](mailto:rosenber@usgs.gov)  
<http://profile.usgs.gov/rosenber/>

Minnesota Department of Natural Resources  
500 Lafayette Road Saint Paul, Minnesota 55155-4037  
Office of the Commissioner  
651-259-5555



February 5, 2016

Ms. Beverly Jones Heydinger  
Chair  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East  
Suite 350  
St. Paul, MN 55101-2147

**Re: In re Application of Enbridge Energy  
MPUC Docket No. PL-9/CN-14-916**

Dear Chair Heydinger:

I am writing regarding a recent petition made by the White Earth Band of Ojibwe (Band) to intervene in the above-captioned proceedings. The Petition was premised in part on a claim made by the Band that it has off reservation hunting, fishing and gathering rights (usufructuary rights) in the 1855 ceded territory.

The Minnesota Department of Natural Resources (DNR) is not a party in the above referenced proceeding and, in light of DNR's role in assisting in the preparation of environmental review documents for this proposed project, the DNR has opted not to intervene in these proceedings as a party. The DNR is, however, concerned about any ruling the Public Utilities Commission (PUC) might make regarding the Band's claim that it has usufructuary rights in the 1855 ceded territory in the context of addressing the Band's request to intervene in these proceedings. A PUC decision to permit the Band to intervene in these proceeding premised on claimed usufructuary rights could have legal implications reaching well beyond these proceedings. The DNR, therefore, requests that if the PUC permits the Band to intervene it

do so using its discretionary authority without addressing the Band's claim that it has usufructuary rights in the 1855 ceded territory.

Thank you in advance for your attention to this matter.

Sincerely,



Dave Schad  
Deputy Commissioner  
Minnesota Department of Natural Resources

cc: Sherry Enzler, General Counsel  
Jamie Schrenzel, Environmental Review

23.0005 02-02-16 Ltr.HydingerreWEBand



## White Earth Reservation Tribal Council

P.O. Box 418  
 White Earth, Minnesota 56591  
 Tel. (218) 983-3285  
 Fax (218) 983-3641

February 8, 2016

Bill Grant  
 Department of Commerce  
 85 7<sup>th</sup> Place East, Ste 500  
 Saint Paul, Minnesota 55101

Re: EIS – Sandpiper Pipeline and Line 3 Replacement

Dear Mr. Grant,

Following our conversation on February 3, 2016, it is my understanding that the Department of Commerce is negotiating with Cardno to possibly complete the Environmental Impact Statements for the proposed Sandpiper and Line 3 Replacement pipelines. Consideration of any engineering firm before release and comment on the scoping document is premature in my estimation, and contrary to the position taken by Public Utilities Commission that the process be transparent, and involve all parties and multiple agencies of the State of Minnesota.

On December 21, 2015, the White Earth Band of Ojibwe filed a motion in the Sandpiper proceedings requesting that Exponent and Battelle receive Requests for Proposals, as the Band believes that these firms are competent and capable. The Public Utilities Commission advised that the substance of this request could be addressed with the scoping process. Therefore, it is not appropriate for the Department of Commerce to engage in negotiations which may render the request to consider other engineer firms moot, especially given the representations of the Public Utilities Commission that scoping was the appropriate procedural event to address the request.

The White Earth Band of Ojibwe urges the Department of Commerce to engage in a transparent and inclusive process to mitigate the concerns of many, including the Band, that their positions are not being heard. The White Earth Band of Ojibwe requests that negotiations with contractors be fully disclosed to all parties, with the opportunity for input, or that negotiations be placed on hold pending consideration at scoping, as was represented to the parties.

The White Earth Band of Ojibwe appreciates your consideration in this matter.

Sincerely,

*Joseph Plumer*  
 Joseph Plumer, Tribal Attorney

CHAIR  
 VACANT

SECRETARY-TREASURER  
 Tara Mason

DISTRICT I  
 Steven "Punky" Clark

DISTRICT II  
 Kathy Goodwin

DISTRICT III  
 Kenneth Bevins

STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John A. Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of  
Enbridge Energy, Limited Partnership  
for a *Certificate of Need* and *Pipeline*  
*Routing Permit* for the Line 3 Replacement  
Project in Minnesota

**REPLY TO RESPONSE FILED BY  
ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP**

Docket Nos. PL-9/CN-14-916 and PL-9/PPL-15-137

To: The Minnesota Public Utilities Commission

On January 29, 2016, the Applicant, Enbridge Energy, Limited Partnership filed its Response to the Petition of the White Earth Band of Ojibwe dated January 19, 2016 to intervene in the above-captioned matter. The White Earth Band of Ojibwe separately addresses the Response filed by the Applicant for the following reasons: (1) the Applicant offers no legal or factual support for its conclusion that the members of the White Earth Band of Ojibwe have no legal and actual interests in the resources within the 1855 Treaty ceded territory, (2) the Applicant offers no legal or factual support for its conclusion that the State of Minnesota has no obligation to engage in meaningful consultation with the White Earth Band of Ojibwe regarding the resources within the 1855 Treaty ceded territory; and (3) the Applicant continues to make legal conclusions which it has been advised it is without the jurisdictional authority to make, and to request that the Public Utilities Commission make the same conclusions without the jurisdictional authority to do so.



It is unequivocal that the White Earth Band of Ojibwe has an interest, protected by no other party to these proceedings, in the resources within the 1855 Treaty-ceded territory and its Reservation which may be impacted by the Project as proposed.<sup>1</sup> First, to suggest, as the Applicant has done, that there is no support for the proposition that its proposed project may impact resources within the region of the State where it proposes to build major pipeline infrastructure is at best disingenuous and at worst willfully misleading. Second, to suggest, as the Applicant has done, that usufructuary use rights within the 1855 Treaty-ceded territory do not exist is a baseless conclusion.<sup>2</sup>

At no time has the White Earth Band of Ojibwe asked the Public Utilities Commission (or the Applicant) to reach a legal conclusion regarding the existence of off-reservation retained and reserved usufructuary use rights. The White Earth Band of Ojibwe reasserts here again clearly that such rights exist, and that the authority to make any determination regarding the scope of such rights lies exclusively with the parties to the Treaty and with the Federal Courts.<sup>3</sup>

---

<sup>1</sup> The grounds for intervention provided in each of the statutory provisions cited by the Applicant in its Response are met. *See*, Minn. Stat. §§ 7829.0800, 1400.6200, 1405.0900.

<sup>2</sup> Counsel for the Applicant made similar arguments in the proceedings regarding the Sandpiper Pipeline, concluding that because there was no judicial determination regarding usufructuary use rights within the 1855 Treaty ceded territory, such rights do not exist. As previously addressed by the White Earth Band of Ojibwe, this conclusion is unlawful and absurd as a judicial determination is not required for a Treaty to have force and effect; moreover, this conclusion disregards entirely the historic and political relationships of the White Earth Band of Ojibwe to the State and Federal governments. *See*, North Dakota Pipeline Company LLC's Response in Opposition to Petitions for Reconsideration dated September 3, 2015, at III, Docket No. PL6668/CN-13-473 and White Earth Band of Ojibwe's Reply to Applicant's Response dated September 9, 2015, Docket No. PL6668/CN-13-473.

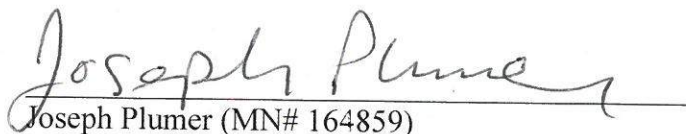
<sup>3</sup> *See* White Earth Band of Ojibwe's Reply to Applicant's Response dated September 9, 2015, Docket No. PL6668/CN-13-473.

The White Earth Band of Ojibwe similarly addresses here issues raised by the Minnesota Department of Natural Resources in its letter to the Commission dated February 5, 2016, to make clear, again, that the Public Utilities Commission is not being asked by White Earth to make a legal determination regarding its off-reservation retained and reserved usufructuary use rights within the 1855 Treaty ceded territory, as the Public Utilities Commission has no jurisdictional authority to do so. The Minnesota Department of Natural Resources, like the Public Utilities Commission, is not a party of the 1855 Treaty, and has no authority to make any conclusions regarding the rights related to that treaty. Therefore any conclusion reached by this Department regarding such rights should be disregarded.

The White Earth Band of Ojibwe raises no issues in the present Petition to Intervene which were not raised in its Petition to Intervene in the proceedings regarding the Sandpiper Pipeline.<sup>4</sup> To deny the White Earth Band of Ojibwe the right to intervene in these proceedings, while granting it the right to intervene in the Sandpiper proceedings, would be arbitrary and would deprive the White Earth Band of Ojibwe its due process rights to protect its legal and actual interests within its Reservation and the 1855 Treaty-ceded territory. Although the projects are separately offered for permitting, both applications are for large scale oil pipeline infrastructure proposed to be co-located. It is impossible to comprehend how a party raising concerns about the location of a proposed project could have interest in the outcome of one of the project applications and not the other project application.

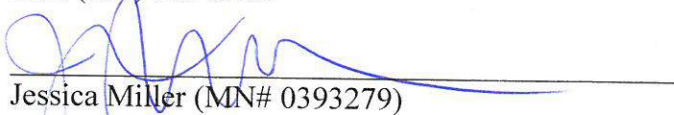
For the foregoing reasons, the White Earth Band of Ojibwe requests that the Public Utilities Commission disregard entirely the Response filed by the Applicant for lack of legal and factual support, and grant the Petition of the White Earth Band of Ojibwe for Intervention in the above captioned proceedings.

Dated: 2/10/16



Joseph Plumer (MN# 164859)  
Attorney for White Earth Band of Ojibwe  
P.O. Box 238  
White Earth, MN 56591  
Telephone: (218) 983-3285  
Fax: (218) 983-3269

Dated: 2/10/16



Jessica Miller (MN# 0393279)  
Attorney for White Earth Band of Ojibwe  
P.O. Box 238  
White Earth, MN 56591  
Telephone: (218) 983-3285  
Fax: (218) 983-3269

<sup>4</sup> White Earth Band of Ojibwe Petition to Intervene dated May 1, 2014, Docket Nos. PL6668/CN-13-473 and PL6668/PPL-13-474.

Print

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## Service List Member Information

## Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Barker	Kenneth	kenneth.barker@centurylink.com	Centurylink Communications, LLC	Electronic Service	No
Beatty	Richard	rjb1946@aol.com	N/A	Electronic Service	No
Beimers	Sarah	sarah.beimers@mnhs.org	Minnesota Historical Society	Electronic Service	No
Blackburn	Paul	paul@paulblackburn.net	N/A	Electronic Service	No
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson Byron	Electronic Service	No
Cramer	Rebecca	rebacramer@gmail.com	N/A	Electronic Service	No
Drawz	John E.	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	No
Frantz	Kate	kate.frantz@state.mn.us	Department of Natural Resources	Electronic Service	No
Gasele	John R.	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	Electronic Service	No
Germundson	Travis	travis.germundson@state.mn.us	N/A	Electronic Service	No
Gratz	Emerald	emerald.gratz@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Hayes	Doug	doug.hayes@sierraclub.org	Sierra Club	Electronic Service	No
Hill	Janet	janethillnew@gmail.com	N/A	Electronic Service	No
Hill	Gary	hillx001@umn.edu	N/A	Electronic Service	No
Hokenson	Terry	terryhokn@visi.com	N/A	Electronic Service	No
Hollander	Kathleen	kath77holl77@gmail.com	N/A	Electronic Service	No
Howe	Kari	kari.howe@state.mn.us	DEED	Electronic Service	No
Javaherian	Arshia	arshia.javaherian@enbridge.com	Enbridge Energy	Electronic Service	No
Jeffrey	Susu	susujeffrey@msn.com	Friends of Coldwater	Electronic Service	No
Jensen	Linda	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	No
Kirsch	Ray	Raymond.Kirsch@state.mn.us	Department of Commerce	Electronic Service	No
LaBerge	Kathy	labergeonthelake@yahoo.com	N/A	Electronic Service	No
LaDuke	Winona	winonaladuke1@gmail.com	Honor the Earth	Electronic Service	No
Lindell	John	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Mahlberg	Patrick	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Mattison	Willis	mattison@arvig.net	Self	Electronic Service	No
Miller	Jessica	Jessica.Miller@whiteearth-nsn.gov	White Earth Band of Ojibwe	Electronic Service	No
Moynihan	Debra	debra.moynihan@state.mn.us	MN Department of Transportation	Electronic Service	No
Munter	John	mumooatthefarm@yahoo.com	N/A	Electronic Service	No
O'Reilly	Ann	ann.oreilly@state.mn.us	Office of Administrative Hearings	Electronic Service	No
Patton	Bob	bob.patton@state.mn.us	MN Department of Agriculture	Electronic Service	No
Pearson	Andrew	stopthewar24@gmail.com	N/A	Electronic Service	No
Plouff	Abbie	abbie.plouff@gmail.com	N/A	Electronic Service	No
Plumer	Joseph	joep@whiteearth.com	White Earth Band of Ojibwe	Electronic Service	No
Pranis	Kevin	kpranis@liunagroc.com	Laborers' District Council of MN and ND	Electronic Service	No
Pust	Tammy	Tammy.Pust@state.mn.us	Office of Administrative Hearings	Electronic Service	No
Reents	James W.	jwreents@gmail.com	N/A	Electronic Service	No
Roe	Steve	roetreat@crosslake.net	N/A	Electronic Service	No
Ross	Jean	jfross@umn.edu	N/A	Electronic Service	No
Sattinger	Stan	sattinss@aol.com	N/A	Electronic Service	No
Schrenzel	Jamie	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	Electronic Service	No
Schrull	Claudia	CLAUDIA.SCHRULL@ENBRIDGE.COM	Enbridge Energy Company, Inc.	Electronic Service	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	No

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Smith	Richard	grizrs615@gmail.com	Friends of the Headwaters	Electronic Service	No
Smith	Mollie	msmith@fredlaw.com	Fredrikson Byron PA	Electronic Service	No
Watson	Tom	twatson@iphouse.com	Whitefish Area Property Owners Association	Electronic Service	No
Watts	James	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	Electronic Service	No
Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Wolfgram	Jonathan	Jonathan.Wolfgram@state.mn.us	Department of Public Safety	Electronic Service	No

**Paper Service Member(s)**

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Corp of Engineers	Army	Army Corps of Engineers	180 5th St E Ste 700, Saint Paul, MN-55101	Paper Service	No
Hottinger	John	N/A	14 Irvine Park Unit 14A, St. Paul, MN-55102	Paper Service	No
Lueck	Otto Edwin	N/A	18719 US Hwy 2, Warba, MN-55793	Paper Service	No
Nicholie	Zoe	N/A	4140 Grand Ave S, Minneapolis, MN-55409	Paper Service	No
Peterson	Alice	N/A	24153 300th St NW, Argyle, MN-56713	Paper Service	No
Peterson	Jesse	N/A	2011 East Second St, Duluth, MN-55812	Paper Service	No
Vraa	Janice	N/A	22070 512th Ln, McGregor, MN-55760	Paper Service	No
Vraa	Ken	N/A	22070 512th Ln, McGregor, MN-55760	Paper Service	No

Print

Close



**PO BOX 63, 607 MAIN AVE, CALLAWAY MN 56521**  
**INFO@HONOREARTH.ORG | WWW.HONOREARTH.ORG**

May 2, 2016

Mr. David Fredrickson, Chairman  
 Minnesota Environmental Quality Board  
 520 Lafayette Rd  
 St. Paul, Minnesota 55155

Re: Comments in support of request for EQB to change the RGU for Sandpiper/Line 3 pipeline project Environment Impact Statement, from PUC/DOC to PCA and/or DNR

Dear Chairman Fredrickson,

Honor the Earth supports the citizen request to change the Responsible Government Unit for the Sandpiper/Line 3 pipeline project Environment Impact Statement, from the Public Utilities Commission and Department of Commerce, to the Pollution Control Agency and Department of Natural Resources. We understand that Minnesota Rules 4410.0500, Subpart 6 grants the EQB the authority to designate “a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.” We feel that the relative difference in expertise is clear and that the EQB has a responsibility to implement this change in RGU in order to uphold its environmental stewardship responsibilities to the people of Minnesota.

Honor the Earth has been part of the regulatory process for these proposed pipeline projects since the beginning, over two years ago, and we have found it profoundly dysfunctional from the start. We have no confidence in the current proceedings, as implemented by PUC and DOC.

It is impractical to include here the entire list of procedural errors and other ways that the PUC and DOC have discouraged and blocked public participation, silenced the voices of Native people, disrespected tribal governments, ignored feedback, contradicted themselves, broken promises, and otherwise pushed a process that avoids due diligence and an honest analysis of environmental, economic, and social impacts. Instead, we will provide a highlight reel that demonstrates the pattern.

Included as addenda to this letter is a set of Exhibits that document some of the problems we reference here. We have also sent a version of these comments and documentation to the EPA Region 5 (see Exhibit A), to inform them that the expectations for tribal consultation they outlined in their February 25th letter to the PUC and DOC (see Exhibit B) are indeed not being met, and to ask them to consider moving forward with a joint state-federal EIS unless major structural changes are made to improve this state process, such as a change in RGU.

That EPA letter to the MN and WI agencies was perhaps the most egregious example of DOC disregard of Tribal rights and environmental justice concerns. The letter, dated February 25, enumerated the EPA’s expectations for tribal consultation by MN agencies and even included the contact information in the “cc” section, a clear message to the DOC and PUC that they need to pick up the phone because they haven’t yet. That letter was stamped as received by the DOC on March 1, 2016, but was not posted to the docket until March 28, nearly 4 weeks later. It appears that the DOC intentionally withheld the letter from the

public, from the tribes, from the intervenors, and perhaps from the PUC itself until, conveniently, a few days after the PUC hearing on March 24, 2016, at which the first order of business was to deny the motion by the White Earth Band to be designated a cooperating agency in the EIS. To add insult to injury, to our recollection this was the first time in the process that the PUC dismissed a motion without any discussion and without even giving the author a chance to speak – in this case, Joe Plummer, legal counsel for the White Earth Nation.

In fact, the PUC and DOC have been consistently hostile to the concept of tribal consultation, and have ignored and denied repeated requests, not only by the White Earth and Mille Lacs Bands (the legal intervening parties) but also by the Leech Lake and Fond du Lac Bands, and the National Congress of American Indians, the nation's largest association of tribal governments. Over and over again, the PUC and DOC tell us that their definition of tribal consultation is allowing tribal members and even tribal officials to drive to their public hearings in the middle of nowhere in the depths of winter, wait their turn, and provide a 3-minute comment that is promptly ignored. That is not tribal consultation.

Last summer, the PUC rescheduled its meeting to determine the Sandpiper CN, to a date 2 weeks earlier than the notice given to the tribes. So the White Earth and Mille Lacs Bands held their own tribal hearings and wrote letters to the PUC asking them to postpone their decision until the testimony collected at those hearings could be included in the record (see Exhibit C). The PUC ignored those requests and approved the CN on the very same day as the second tribal hearing.

The PUC and DOC have also consistently resisted their duty to conduct thorough environmental review for these proposed pipelines. They have ignored comments by the PCA and DNR about the extreme environmental risks associated with the proposed route and the need to consider alternative routes. They approved a laughably inadequate Environmental Assessment as an acceptable substitute for an EIS, which was later deemed a violation of the MEPA by the MN Court of Appeals. Enbridge and the State of Minnesota unsuccessfully petitioned that decision to the MN Supreme Court, and were dragged to the current EIS process kicking and screaming.

The PUC and DOC failed to understand or act on MPCA warnings in a May 2, 2015 letter to Scott Ek of DOC regarding Line 3 Replacement (see Exhibit D). The MPCA wrote:

“Enbridge's preferred route is proposed to co-locate the Line 3 Replacement on the same route as its proposed Sandpiper pipeline project. Although the MPCA's environmental concerns with the Sandpiper project are known, it must be noted here that the discussion of alternatives in the Line 3 Replacement applications does not address those concerns or consider any system or route alternatives that were brought forward in the Sandpiper proceedings. Nor do the applications appear to provide adequate basis for selection of a southern route alternative over a northern route alternative, such as rebuilding of the Line 3 Replacement in its current location...It does not appear that Enbridge evaluated any system alternatives or route alternatives that have been included in the Sandpiper docket. Sandpiper System Alternative 3 and System Alternative 3 Modified (a route alternative included by the Commission in the sandpiper route preceding) are given minimal to no consideration. Despite Enbridge's awareness of the significant environmental concerns expressed by state agencies and interested parties in the Sandpiper proceedings, and the alternatives offered in those dockets, the Line 3 Replacement applications do not address these alternatives. The applications discuss three options, the preferred route and two alternatives involving replacement along or parallel to the existing Line 3, i.e., rebuilding Line 3 in place. However, the applications do not adequately discuss the alternatives for rebuilding Line 3 in place or the resulting impact to environmental values of all three options. The applications also do not provide sufficient information for comparison and inform consideration of the options.”

The DOC also ignored important information about groundwater and surface water interactions, which were submitted to the docket by USGS about the Hydrological and Biogeochemical Research in the Shingobee River Headwaters area, North-Central Minnesota. (See Exhibit E).

The DOC does not have the expertise necessary to produce an EIS with the breadth, depth, or quality required for these projects. The DOC does not regulate pipelines or crude oil, and their job is to promote the flow of capital, not steward our natural resources or protect public health. This is a conflict of interest. Environmental studies should be overseen by the agencies in charge of environmental protection.

The DOC also does not have the structure or the capacity to uphold the state's responsibility to enter into formal government-to-government relationships with the tribes or to navigate the protection of constitutionally protected treaty resources and the complicated legal issues governing usufructuary property rights in ceded territory. DNR and PCA are far better positioned to work with the tribes. Both agencies are subject to Governor Dayton's Executive Order 13-10, which outlines the requirements of tribal consultation, an order to which the PUC claims exemption. DNR already has an existing natural resources co-management relationship with the 1837 and 1854 Chippewa ceded territories, and clearly understands the valuable resources at stake with the recognition of the same co-management rights in the 1855 territory. The DNR seems to have demonstrated this understanding in a letter to the PUC dated February 5, 2016, and posted on the Line 3 docket (see Exhibit F).

The DNR and PCA have much greater expertise in analyzing the potential impacts of the project. The DOC does not have the intimate knowledge base of all of the disciplines along the entire corridor like DNR and PCA. DNR and MPCA have field offices throughout MN and relationships in place with the reservations. The DNR has field hydrologists, hydro-geologists, biologists, fisheries and wildlife managers, and ecologists who know the issues and resources intimately. DOC is a metro agency focused on accomplishing Enbridge's pipeline goals under MN law.

The DOC Draft Scope and Schedule for EIS Scoping Meetings issued April 11, 2016, has 13 meetings scheduled along the Enbridge preferred new route from Clearbrook to Park Rapids to Superior, Wisconsin, with zero meetings about rebuilding Line 3 pipeline in place or abandonment along the 150+ mile US Highway 2 corridor (See Exhibit E). In fact, the word abandonment does not appear in the DOC Notice. Enbridge wants to create more environmental messes in Minnesota without cleaning up the old ones, and DOC is helping them. Both the MPCA and DNR have common environmental protection obligations and spill response and clean-up. The DOC does not, and frankly will not be involved at all after the permit is issued.

The problems with the current EIS scoping process are many. The DOC has once again rushed a hearing schedule across northern Minnesota to precede the Governor's Fishing Opener, the customary start of people returning to affected lakes region, in order to thwart public participation from those with the most resources and access to the process. Also, the entire draft scoping document for the EIS is premised on a "project purpose" defined as transporting oil from the Bakken region of ND to Superior, WI. That is not the purpose of the project from the point of view of Minnesota residents who stand to have their land condemned thru eminent domain. That is a private purpose according to Enbridge's desires and bottom line. Defining the project purpose in this way precludes many alternative routes that would get product from the Bakken to Midwest refineries with far less social, environmental, and economic risk. The document also defines the scope of the EIS to ignore all impacts outside the state boundaries and preclude any interstate coordination. We feel that these high-level errors in project definition and impact scope are significant enough to invalidate this entire scoping process.

To our knowledge, DOC has never done an EIS per the MN Environmental Policy Act let alone an EIS of these magnitudes. Also, to our knowledge, this is the first time a Minnesota agency has conducted an EIS on a pipeline without federal support. It is a difficult task even for an experienced agency. For an agency like the DOC that lacks the relevant experience, expertise, and capacity, we have every reason to anticipate their reliance on the applicant to guide the study, to the detriment of the EIS.

Please relieve the PUC and DOC of their status as the RGU for the EIS on Sandpiper/Line 3 and designate PCA and/or DNR as the new RGU. We feel the EQB has a responsibility to make this change in order to make possible the high-quality study that the people of Minnesota deserve when facing a proposal with such enormous implications for water quality, human rights, and global climate stability.

Miigwech,

A handwritten signature in black ink, appearing to read "Winona LaDuke", followed by a horizontal line extending to the right.

Winona LaDuke  
Executive Director, Honor the Earth



**From:** [Tammy Lou Pfaff](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Letter from the Mayor -Sandpiper Pipeline Project  
**Date:** Friday, April 29, 2016 3:27:14 PM  
**Attachments:** [1977\\_001.pdf](#)

---

Please see the attached letter.

Tammy Lou Pfaff, MCMC  
City Clerk/Airport Manager  
Zoning Administrator  
City of Aitkin  
109 1st Avenue NW  
Aitkin, MN 56431  
218-927-2527 (phone)  
218-927-1834 (fax)

---

**From:** [secretary@ci.aitkin.mn.us](mailto:secretary@ci.aitkin.mn.us) [mailto:[secretary@ci.aitkin.mn.us](mailto:secretary@ci.aitkin.mn.us)]  
**Sent:** Friday, April 29, 2016 3:25 PM  
**To:** Tammy  
**Subject:** Attached Image



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)



# City of Aitkin

109 First Avenue NW • Aitkin, MN 56431  
218/927-2527 • Fax 218/927-1834  
[www.ci.aitkin.mn.us](http://www.ci.aitkin.mn.us)

William Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, Minnesota 55155

Executive Director William Seuffert,

I am the Mayor from the City of Aitkin. There is a request before the Environmental Quality Board (EQB) to switch the permitting process for the Sandpiper Pipeline project and the Line 3 Replacement project from the Minnesota Public Utilities Commission (MNPUC) to the Minnesota Department of Natural Resources (MNDNR) and the Minnesota Pollution Control Agency (MNPCA). I am opposed to that request.

The MNPUC has the authority over the projects and the expertise to analyze the route decision, environmental review, and the certificate of need.

Respectfully,

A handwritten signature in blue ink that reads "Gary L. Tibbitts". The signature is written in a cursive, flowing style.

Gary L. Tibbitts

Mayor, City of Aitkin

**From:** [Hannah Filer](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** PCA and DNR for RGU!  
**Date:** Monday, May 02, 2016 1:39:19 PM

---

I support the request to appoint PCA and DNR as the RGU for the Sandpiper/Line 3 Environmental Impact Statement because they have far greater expertise and greater capacity to execute the high-quality study this project demands.

Keep this project in the correct hands, please. This is my home.

Regards,  
Hannah

**From:** [DIANE BRANDT](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Pipeline review  
**Date:** Friday, April 22, 2016 9:59:37 AM

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To Whom it May Concern:

The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint 'Responsible Governmental Responsibility Unit' made up of the DNR and MPCA.

Thank you.

Martin and Diane Brandt  
4216 County 71  
Hackensack, MN 56462

**From:** [Carolyn Krech](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** pipelines  
**Date:** Wednesday, April 20, 2016 1:59:24 PM

---

EQB,

The proposed Sandpiper and Line 3 Replacement route has the potential to impact our watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint 'Responsible Governmental Responsibility Unit' made up of the DNR and MPCA.

Thank you for giving this attention,

Dr. Paul and Carolyn Krech  
Ten Mile Lake property owners

**From:** [Donald Hall](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Proposed sandpaper and wine three replacement route  
**Date:** Monday, April 18, 2016 5:39:23 PM

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“The proposed Sandpiper and Line [3 Replacement route](#) has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint ‘Responsible Governmental Responsibility Unit’ made up of the DNR and MPCA.”

Sent from my iPhone

Sent from my iPhone

**From:** [john cheryl grover](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Public Comment Sandpiper/Line 3  
**Date:** Friday, April 29, 2016 10:32:02 AM  
**Attachments:** [EQB Testimony.docx](#)

---

Thank You for placing my written testimony on record.

Cheryl Grover  
37861 161<sup>st</sup> Ave  
Bagley, MN 56621

Dear EQB Board,

My name is Cheryl Grover. I am the retired, Clearwater County Assessor and a landowner in Clearwater County. The preferred route for the Sandpiper and Line 3 Pipelines, as proposed, will someday cross our property. The other hat that I proudly wear is that of Community Ambassador of Clearwater County to Enbridge Pipeline.

Recently I have visited with several business owners in Clearwater County who are adversely affected by the Regulatory delays that are occurring in getting the Sandpiper and Line 3 built.

As contractors these companies are clearly impacted every time there is a delay. For instance, Enbridge has had to place some of the North Dakota work on "hold" until the Regulatory process is completed. Work that had been in place to happen this year, contracts had been awarded to several Clearwater County Contractors, these contractors felt their commitments had been filled and had no more room for other work. Now these jobs they felt they could not do, are filled by other contractors and the Clearwater County Contractors have employees who may not have work. As a State do we not want our workers working – are we failing the process somewhere?

As a landowner, my husband has been very pleased with the easement process across our farm. Last year at a similar EQB meeting I heard a gentleman testify that Enbridge does not pay "fair market value" for the easements. As a landowner, I have firsthand knowledge that they do pay very fairly and work very closely with the landowner to make sure that "fair treatment" is extended to everyone along the route. It does get frustrating for farmers to plan their crops and field work around schedules that keep getting delayed – as I do my Ambassador work I hear over and over "let's get it done!"



As the County Assessor of Clearwater County I was here last year and shared “pie” charts of how the new construction of public utilities in small counties can affect the tax capacity. Currently, 54% of the tax capacity of Clearwater County is paid by Public Utilities. This causes all the agricultural, residential and commercial properties to pay less taxes. The proposed new construction for the Sandpiper and Line 3 will create even a larger shift of this tax burden. Which of us in this room would not agree that anytime the property tax burden can be lowered for the local farmers (like myself), homeowners and business owners; this is a “win win” situation! Pipelines get built – they pay more taxes and we pay less. This is why I became an Ambassador for Clearwater County – I like to deliver this message to the taxpayers; Enbridge has gained so much respect after having pipelines cross our County since 1949. They have certainly proven to be good neighbors and very good stewards of the land that they cross.

The preferred route is by far the safest and will be laid in the least populated areas of Minnesota.

Local Citizens are very well informed on all of the 22 meetings held so far in this process. Newspaper and radio ads are very prominently and widely implemented. It is my sincere opinion that the RGU bested suited to govern this process is the DOC and PUC; they have very successfully governed these type of regulatory processes and I feel should continue to do so. Let’s keep this important process moving forward.

Thank you so much for taking the time to listen to my testimony. It is always a pleasure to be involved in such important work.

Sincerely,

Cheryl Grover

**From:** [Andy Pearson](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Public Comments re: Change of RGU for Sandpiper / Line 3  
**Date:** Monday, May 02, 2016 3:59:26 PM  
**Attachments:** [MN350-EQB-RGU-Comments.pdf](#)

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Hello,

Attached please find public comments from 100+ individuals collected by MN350 in support of changing the RGU for Sandpiper / Line 3. If you need this information in a different format, let me know.

Thanks very much,

--

Andy Pearson  
Midwest Tar Sands Coordinator, MN350  
[andy@mn350.org](mailto:andy@mn350.org)  
612-600-5951

# Petition to MN Environmental Quality Board

Dear Chairman Fredrickson,

We, the undersigned, support the citizen requests from the state's 11 tribes, former Minnesota Pollution Control Agency administrator Willis Mattison, and all the environmental and community groups engaged in the pipeline regulatory process to designate the Minnesota Department of Natural Resources (MDNR) and the Minnesota Pollution Control Agency (MPCA) as co-lead responsible governmental units for preparation of the final Environmental Impact Statement (EIS) for the Sandpiper and Line 3 pipelines. We do not support the current process between the Department of Commerce (DOC), MDNR, and MPCA that names the DOC as the lead agency.

We support the citizen request with these main points:

The Minnesota Environmental Protection Act (MEPA) must be respected in relation to the creation of a new pipeline corridor. This requires state agencies to take into account the impact of their actions on the environment. Indigenous and environmental groups have insisted this law be used as it will create a robust EIS to ensure a fair and just process that considers impacts these pipelines have on Minnesota communities. We are concerned the DOC will continue to limit the scope of system alternatives (alternative routes) eligible for consideration in the upcoming EIS, as it has done in the past. A citizen lawsuit revealed the illegality of DOC's circumvention of MEPA with its alternative environmental review process for pipelines when the Minnesota Court of Appeals agreed with citizens and ordered a full EIS instead.

The MDNR and MPCA have much greater natural resource protection authority and far greater expertise for assessing environmental impacts from pipeline construction and potential oil spills. We have seen the detrimental effects of pipeline spills, such as the disaster near Kalamazoo, Michigan where an Enbridge pipeline broke in 2010. This spill was the largest and most toxic inland oil spill in our nation's history. Since 2005, Enbridge has been responsible for at least 763 spills, totaling 93,852 barrels of both light and heavy crude, including tar sands crude that has spilled and devastated local waterways. We must pay attention to these pipeline spills, as we do not want our pristine lakes and rivers to be irreversibly harmed like those in Kalamazoo. Since the court-ruled full EIS will be the first ever prepared for a crude oil pipeline in Minnesota, it needs to be done with transparency and without an apparent conflict of interest.

The Department of Commerce is not an environmental agency, does not have natural resource management responsibility, and has a clear conflict of interest in this instance. For these reasons, we request the EQB designate the MDNR and MPCA as co-lead responsible governmental units for preparation of the EIS for the Sandpiper and Line 3 pipelines.

Total signatures: 101

	<b>Name</b>	<b>State</b>	<b>Comment</b>
1.	Andy Pearson	MN	
2.	Allen Richardson	MN	It is inconceivable that rigorous environmental review would allow these pipelines to go through the treaty-protected wild rice of Minnesota. Allen Richardson
3.	Mahyar Sorour	MN	Mahyar Sorour
4.	Gregory Johnson	MN	
5.	Adam Sippola		
6.	John Forney	MN	Governor Dayton has announced his intent to preserve and protect our water resources. This EIS MUST support that initiative.
7.	Sydney Gram	MN	
8.	Shelly Zenner		
9.	Sam Pranger	NY	
10.	Pat Hecker	MN	
11.	Bill Adamski		Bill Adamski
12.	David Fischer	MN	David Fischer
13.	Danielle Cifuentes		
14.	Julie Tilsen	MN	
15.	Jason Garcia	MN	

	Name	State	Comment
16.	Chris Burda	MN	
17.	Julie Graves	MN	
18.	Liza G. garcia	MN	
19.	Eric Immler	MN	
20.	Roya Damsaz	MN	
21.	Emily Moore	MN	Emily Moore
22.	Joan Stauffer		
23.	Lee Samelson	MN	
24.	Shanai Matteson	NE	
25.	Gregory Laden	MN	Gregory Laden
26.	James Davidson	NM	
27.	Jeanne Fahlstrom	MN	
28.	Bryn Chambers	MN	
29.	Carol Spear	MN	
30.	Ken Austin	MN	
31.	Paul J Endresen	HI	At this point with Global over exploitation, oil should be left in the ground and serious restoration to the planet as a living entity needs be commenced.
32.	Joshua Houdek		
33.	Susan Sell	MN	
34.	Jim Reents	MN	
35.	mark herwig	MN	mark herwig
36.	Mike Schrader	MN	
37.	Holly Mattison	MN	
38.	dagmar romano		dagmar romano
39.	Lois Norrgard	MN	Lois Norrgard
40.	Colleen Krebs	MN	
41.	Christine Popowski	MN	Christine Popowski
42.	Sarah Harper	MN	Sarah Harper
43.	Anne Bauers	MN	
44.	Marcy Leussler	MN	
45.	Susu Jeffrey	MN	for FriendsofColdwater.org
46.	Ann Mongoven	MN	
47.	Sandy Ahlstrom	MN	
48.	Kurt Kimber	MN	Kurt Kimber

	Name	State	Comment
49.	Linda Littrell	MN	
50.	Jim Tjepkema	MN	
51.	Mary Ackerman	MN	
52.	Dawn Tuveson	MN	
53.	Cecelia Newton	MN	
54.	Sarah Peters	MN	
55.	Stan Sattinger	MN	
56.	Lowell Johnson	MN	The water resources and economic well being of Minnesota are too valuable to risk a hasty approval of the proposed Sandpiper and Line Three routes. Both need EISs done by qualified evaluators.
57.	John Bueche	MN	
58.	Amanda Heuring	ND	
59.	Cat Gilfillen	MN	
60.	Steve Habermann	ND	
61.	Carol Mockovak	MN	
62.	Catherine Apostle	Minnesota	Catherine Apostle
63.	Chris Bremer	MN	
64.	Rick Gravrok	MN	
65.	Rick Gravrok	MN	
66.	Louis Lelchuk	MN	
67.	Judy Goebel	MN	
68.	Ronald Meyer	MN	The proposed route puts at risk a watershed that has been identified as the third most critical watershed for delivering clean drinking water in the eastern US. Minnesota has no defined strategy for how we accommodate pipelines while protecting the resources, like water, that are critical elements of our state's economy and quality of life. If we are to do a real environmental study we need technical expertise to do it. Not an administrative function like the PUC. I don't believe they have the needed technical knowledge to do a complete job.
69.	Kathy Steinhauer	MN	Honor the Earth- Honor the Treaties
70.	Alice Madden	MN	Alice Madden
71.	Paul Little	MN	
72.	Claire Curran	MN	
73.	Catharine Mader	IL	Catharine Mader
74.	Jennifer Marik	MN	
75.	Ginger Juel		
76.	Ralph Yehle	MN	Ralph J Yehle
77.	Timothy Little		
78.	Nancy Wangler	MN	

	Name	State	Comment
79.	Sharon Mitchell	MN	
80.	emrys stram	ND	Emrys Stramer
81.	Joy Throm	MN	Joy Throm
82.	Jeff Kolstad	MN	Our Great Grand Children will thank us for keeping the Garden Green
83.	Thane Maxwell		
84.	Dana Cossette	MN	
85.	Judy Murphy	MN	
86.	Jodie Schrupp	CO	
87.	Paul THoMPSon	MN	please move our economy away from fossil fuels ASAP, a price on carbon pollution and a return of the funds to households...is the fastest way to accelerate this process, it's called Carbon Fee and Dividend. Check it out at the Citizens' Climate Lobby .org web site
88.	Robert Stancer	MN	
89.	Kathy Och	MN	
90.	Cathy Velasquez Eberhart	MN	
91.	Darwin Raymond	OH	
92.	Lisa Hammonds	MI	
93.	Lisa Childress	TN	
94.	Martha Torrez Allen	IL	
95.	Davy Wink		
96.	Kara Boyd	VA	
97.	Alyssa Tharp		
98.	Ersyla Nellajoy		no money or monetary profit should be gained by distroying or degrading our planet home. i stand with the indigenous peoples right to clean water water and earth. leaveit in the ground. love water not oil
99.	Dustin Seher	ND	
100.	Brendan Rosa	NY	
101.	Frank Rutherford	WI	Frank Rutherford

**From:** [Mahyar Sorour](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Request for Change of RGU for Sandpiper and Line 3 Enbridge Pipelines  
**Date:** Thursday, April 21, 2016 11:21:25 AM

---

Dear Chairman Fredrickson,

I support the citizen requests from the state's 11 tribes, former Minnesota Pollution Control Agency administrator Willis Mattison, and all the environmental and community groups engaged in the pipeline regulatory process to designate the Minnesota Department of Natural Resources (MDNR) and the Minnesota Pollution Control Agency (MPCA) as co-lead responsible governmental units for preparation of the final Environmental Impact Statement (EIS) for the Sandpiper and Line 3 pipelines. I do not support the current process between the Department of Commerce (DOC), MDNR, and MPCA that names the DOC as the lead agency.

The Minnesota Environmental Protection Act (MEPA) must be respected in relation to the creation of a new pipeline corridor. This requires state agencies to take into account the impact of their actions on the environment. Indigenous and environmental groups have insisted this law be used as it will create a robust EIS to ensure a fair and just process that considers impacts these pipelines have on Minnesota communities. I am concerned the DOC will continue to limit the scope of system alternatives (alternative routes) eligible for consideration in the upcoming EIS, as it has done in the past. A citizen lawsuit revealed the illegality of DOC's circumvention of MEPA with its *alternative environmental review* process for pipelines when the Minnesota Court of Appeals agreed with citizens and ordered a full EIS instead.

The MDNR and MPCA have much greater natural resource protection authority and far greater expertise for assessing environmental impacts from pipeline construction and potential oil spills. We have seen the detrimental effects of pipeline spills, such as the disaster near Kalamazoo, Michigan where an Enbridge pipeline broke in 2010. This spill was the largest and most toxic inland oil spill in our nation's history. Since 2005, Enbridge has been responsible for at least 763 spills, totaling 93,852 barrels of both light and heavy crude, including tar sands crude that has spilled and devastated local waterways. We must pay attention to these pipeline spills, as we do not want our pristine lakes and rivers to be irreversibly harmed like those in Kalamazoo. Since the court-ruled full EIS will be the first ever prepared for a crude oil pipeline in Minnesota, it needs to be done with transparency and without an apparent conflict of interest.

The Department of Commerce is not an environmental agency, does not have natural resource management responsibility, and has a clear conflict of interest in this instance. For these reasons, I request the EQB designate the MDNR and MPCA as co-lead responsible governmental units for preparation of the EIS for the Sandpiper and Line 3 pipelines.

Thank you,

Mahyar Sorour

--

Mahyar Sorour

Campus Organizer, Hamline University and St. Catherine University

Minnesota Public Interest Research Group

(612) 627-4035 ext. 306

[mahyar@mpirg.org](mailto:mahyar@mpirg.org)



**From:** [Tom Pagel](#)  
**To:** [\\*EOB Pipelines](#)  
**Cc:** [Loren Solberg \(solbergloren@gmail.com\)](mailto:solbergloren@gmail.com)  
**Subject:** RGU change correspondence related to Sandpiper  
**Date:** Thursday, April 28, 2016 12:57:40 PM  
**Attachments:** [1590\\_001.pdf](#)

---

Please see attached.

**Tom Pagel**

City Administrator

City of Grand Rapids

420 North Pokegama Avenue

Grand Rapids, MN 55744-2662

**Office:** 218-326-7626

**Mobile:** 218-398-0584

**Fax:** 218-326-7608

[www.cityofgrandrapidsmn.com](http://www.cityofgrandrapidsmn.com)

**From:** Fin Admin Grand Rapids [mailto:copy.machine@ci.grand-rapids.mn.us]

**Sent:** Thursday, April 28, 2016 12:47 PM

**To:** Tom Pagel <tpagel@ci.grand-rapids.mn.us>

**Subject:** Attached Image

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CITY OF  
**GRAND RAPIDS**  
IT'S IN MINNESOTA'S NATURE

ADMINISTRATION DEPARTMENT

420 NORTH POKEGAMA AVENUE, GRAND RAPIDS, MINNESOTA 55744-2662

April 28, 2016

William Seuffert  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Dear Mr. Seuffert:

I am writing you regarding in regards to a request to switch the RGU relative to Enbridge's Sandpiper Pipeline project.

As a public administrator I value public process. It is my understanding that there is a request before the Environmental Quality Board (EQB) to switch the permitting process for the Sandpiper Pipeline project and the Line 3 Replacement project from the Minnesota Public Utilities Commission (MNPUC) to the Minnesota Department of Natural Resources (MNDNR) and the Minnesota Pollution Control Agency (MNPCA).

It is confusing to me why such a request would be made when administratively the MNPUC has authority over the projects and the expertise to analyze the route decision, environment review, and the certificate of need. Furthermore, it is my understanding that the MNPCA and the MNDNR prefer that the MNPUC continue to the RGU.

This project's permitting has been delay enough. Please reject this request and allow the permitting process to move forward with the MNPUC.

If you have any questions or require additional information, I may be contacted at 218.326.7626 or via email: [tpagel@ci.grand-rapids.mn.us](mailto:tpagel@ci.grand-rapids.mn.us).

Regards,

A handwritten signature in black ink, appearing to read 'Tom Pagel', written over a white background.

Tom Pagel, P.E.  
City Administrator

**From:** [bragg.robby0](mailto:bragg.robby0)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** RGU for line 3/Sandpiper  
**Date:** Monday, May 02, 2016 3:48:07 PM

---

From the very beginning, it has been clear that Minnesota's Public Utilities Commission lacks both the capacity and motivation to act on behalf of the public and under consultation with affected tribes in the environmental assessment of the Sandpiper/Line 3 corridor.

I support the request to appoint PCA and DNR as the RGU for the Sandpiper/Line 3 Environmental Impact Statement because they have far greater expertise and greater capacity to execute the high-quality study this project demands.

Signed,  
Robert Bragg

**From:** [Jeff Mosner](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** RGU for Pipeline Permits  
**Date:** Saturday, April 16, 2016 11:25:20 AM

---

I have been following this pipeline issue since 2014. It is clear to me that the authority for pipeline review and permit approval should NOT rest with the Dept of Commerce, an agency responsible for advocating for business interests. The DOC has demonstrated through a series of mistakes that they do not have the expertise to efficiently and competently follow statute so that these projects can be fairly analyzed in a timely manner. And further, since these pipelines are NOT public utilities, the PUC should not be in charge of approving them.

This should be treated like mining where the permitting needs to be fully vetted by the agencies responsible for protecting our natural resources. At a minimum, the MEPA-required EIS (that the DOC tried and failed to circumvent) needs to be handled by the DNR, PCA, EQB or some combination of these agencies.

The recent MOU written by the DOC marginalizes the input of these environmental agencies. We cannot allow Enbridge (and other private companies) to continue to dictate what they feel is in Minnesota's best interest. We need the agencies responsible for the stewardship of Minnesota's natural resources to be fully involved in these decisions that will affect all citizens now and in the future.

Jeff & Olga Mosner  
Park Rapids, MN

**From:** [Jeffrey Lang](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** RGU for Sandpiper Project  
**Date:** Tuesday, May 03, 2016 7:31:14 AM

---

The responsible governmental unit for the Sandpiper Project should be the Pollution Control Agency and the Department of Natural Resources, both agencies of State of Minnesota.

This project will threaten and endanger the clean waters in the lakes country of northern and central Minnesota, and the project should follow the existing pipelines from Clearwater to Duluth, and NOT initiate a new routing that borders Minnesota's premier park, Itasca State Park, nor the lakes country from Walker to Duluth on the proposed new "southern" route.

I own property near Lake Itasca in southern Clearwater County, and object to the proposed pipeline running along the east side of the park and the adjacent headwaters of the Mississippi to the north and south of the park.

Jeffrey W. Lang  
jeff.w.lang@gmail.com

1385 Brompton St, Saint Paul, MN 55108-1622  
651 646 0203

**From:** [Riegel, Mark \(MPCA\)](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** RGU Redesignation Letter - 5-2-16  
**Date:** Monday, May 02, 2016 1:43:40 PM  
**Attachments:** [RGU Redesignation Letter - Received 5-2-16.pdf](#)  
[image001.png](#)

---

**Mark Riegel** | Planner  
Environmental Quality Board (EQB)  
520 Lafayette Road | St. Paul, MN | 55155  
(651) 757-2472 | [www.eqb.state.mn.us](http://www.eqb.state.mn.us)



April 29, 2016

RECEIVED  
MAY 02 2016

Dave Fredrickson, Chair  
Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55155

BY:.....

Dear Commissioner Fredrickson:

Please add my voice to those who encourage the Environmental Quality Board at its May 18 meeting rewrite the Memorandum of Understanding for the development of Environmental Impact Statements for the Sandpiper and Line 3 Replacement Projects so that in Section I, the Minnesota Pollution Control Agency, "will make all final decisions regarding the scope and adequacy of the EISS for both of the Proposed Projects."

Since both Projects, as proposed, have heavy impacts on water quality, the "logical" State agency to head up this review is the MPCA.

Thank you to your Board and you considering this.

Sincerely,



John Weber  
22382 Glacial Ridge Trl.  
Nevis, MN 56467-4018

April 29, 2016

RECEIVED  
MAY 02 2016

Dave Fredrickson, Chair  
Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55155

BY:.....

Dear Commissioner Fredrickson:

Please add my voice to those who encourage the Environmental Quality Board at its May 18 meeting rewrite the Memorandum of Understanding for the development of Environmental Impact Statements for the Sandpiper and Line 3 Replacement Projects so that in Section I, the Minnesota Pollution Control Agency, "will make all final decisions regarding the scope and adequacy of the EISS for both of the Proposed Projects."

Since both Projects, as proposed, have heavy impacts on water quality, the "logical" State agency to head up this review is the MPCA.

Thank you to your Board and you considering this.

Sincerely,



John Weber  
22382 Glacial Ridge Trl.  
Nevis, MN 56467-4018



**From:** [Ross Gjevre](#)  
**To:** [\\*EOB Pipelines](#)  
**Cc:** [Scott and Penny Gjevre](#)  
**Date:** Monday, April 18, 2016 6:59:21 PM

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“The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint ‘Responsible Governmental Responsibility Unit’ made up of the DNR and MPCA.”

--

Ross Gjevre

**From:** [John Coughlin](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Sandpiper & Line 3 Energy Corridor  
**Date:** Friday, April 22, 2016 11:00:54 AM

---

To whom it may concern,

The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint 'Responsible Governmental Responsibility Unit' made up of the DNR and MPCA.

Thank you,

John Coughlin

**From:** [Jan](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Sandpiper and Line 3  
**Date:** Wednesday, April 27, 2016 7:11:05 PM

---

To whom it may concern:

As a resident of Remer, Minnesota, I am extremely concerned about Enbridge's proposed Sandpiper and Line 3 that would pass thru sensitive wetlands, streams and lakes four miles from my home. It is absolutely necessary that an EIS be conducted by scientists who understand the science of evaluating these wetlands. For this reason, I request the EQB relieve the Minnesota Public Utilities Commission of its current RGU status for this analysis and replace it with a joint RGU consisting of the Minnesota Pollution Control Agency and the Minnesota Department of Natural Resources.

As an analogy, if I had a serious heart condition I would not want someone who was unfamiliar with the tests and analysis of my lab results to conduct a final evaluation on my heart. In other words, I would not go to my electrician or piano teacher!

Jan Best  
2825 Rapala Drive  
Remer, MN 56672

**From:** [Mary Adams](#)  
**To:** [\\*EQB Pipelines](#); [Stine, John \(MPCA\)](#)  
**Subject:** Sandpiper and Line 3 Pipelines  
**Date:** Monday, April 18, 2016 12:37:14 PM

---

Comments:

- \* Am requesting that DOC be removed from responsibility of implementing and supervising an EIS.
- \* The EQB and DNR have the expertise to assume joint ownership of implementing an EIS.
- \* This is a HUGE project with serious long term environmental implications. This demands a well-researched, science-based EIS accomplished by experts in their field, including economists.
- \* Implementing an EIS is not sufficient. The question is: Who has the expertise, experience and impartiality to honor MEEPA Law?
- \* Posting job requirements and creating a bidding process is appropriate.
- \* The RGU must take into account the National Academy of Science's Dilbit Study. 48,000,000 gallons/day will pass through headwaters country. Diluted bitumen/tar sands oil is highly viscous, sinks to the bottom of water bodies and there are few effective techniques of detection, containment and recovery of submerged oil. The NAC'S Dilbit Study should be required reading.
- \* An impartial Independent Review Commission is needed in order to preview and review proceedings in order to provide "balance" to the proceedings.
- \* Extend the time-line for public hearings through late May or early June. Make it possible to engage the public (propertyrights) and concerned citizens in the process.
- \* Include alternative routes (example SA-4) in the process.

Conclusion: The process continues to be rushed. This is huge with enormous consequences for Minnesota, our waters, our grand children. As a concerned citizen, aware of what has happened the last 3 years, it appears quite one sided...a David vs. Goliath scenario. All the more reason to have a robust, science based EIS, with research-based experts at the helm.

Respectfully submitted,

Mary Adams, [218 652 3519](tel:2186523519)

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:

**From:** [John Flakne](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Sandpiper and Line 3 Replacement Route  
**Date:** Wednesday, April 20, 2016 11:25:53 AM  
**Importance:** High

---

To Whom It May Concern:

The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake in Cass County. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint 'Responsible Governmental Responsibility Unit' made up of the DNR and MPCA.

Sincerely,  
John Flakne  
Ten Mile Lake/Cass County Property Owner

**From:** [Erin Roth](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Sandpiper and Line 3 RGU Comments  
**Date:** Monday, May 02, 2016 1:25:38 PM  
**Attachments:** [EOB RGU Comments.pdf](#)

---

Attached are the API's comments regarding the request to change the RGU for these two pipeline projects. Thank you.

*Mr. Erin T. Roth*

American Petroleum Institute MN/WI  
400 N. Robert St. Suite 1560  
St. Paul, MN 55101  
(202) 682-8304 (office)  
(608) 209-0789 (cell)  
rothe@api.org  
[www.api.org](http://www.api.org)



AMERICAN PETROLEUM INSTITUTE

## Minnesota & Wisconsin

Erin T. Roth  
Executive Director

May 2, 2016

David Fredrickson, Chair  
Minnesota Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN 55155

Dear Chair Fredrickson,

The American Petroleum Institute (API) strongly opposes the request for the Environmental Quality Board's (EQB) designation of a different responsible governmental unit (RGU) for the Environmental Review of the North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership's proposed Line 3 replacement pipeline.

The API, based in Washington, DC, along with its Minnesota office, represents all segments of America's oil and natural gas industry. Its more than 650 members produce, process, and distribute most of the nation's energy.

Current RGU rules were put in place for pipelines for a reason. It provides for a uniform and formal process for all parties to follow. By now changing the RGU would violate current rules and be unfair to the proponents of these projects who have followed the rules. The API represents pipeline companies who operate in Minnesota and is deeply concerned about this potential violation and what precedent this would set for future pipeline energy infrastructure projects in the state. We feel that this is strictly another attempt by opponents of Sandpiper and the Line 3 rebuild to change the game from the current process in an effort to further delay these two very important energy infrastructure projects.

It has been made clear at the last EQB meeting as stated, Minnesota Rules 4410.4400, Subp. 24, Pipelines designates the Public Utilities Commission as the responsible governmental unit ("RGU") for the proposed Sandpiper Pipeline, as well as for the proposed Line 3 replacement pipeline. API would strongly urge the EQB to follow the current RGU structure for these important projects and reject the request to change the current RGU.

Thank you for your consideration.

Sincerely,

Mr. Erin T. Roth

400 Robert Street, North  
Suite 1560  
St. Paul, MN 55101

Phone 202-682-8304  
Cell 608-209-0789  
Email rothe@api.org  
www.api.org

An equal opportunity employer

**From:** [Arsan, Karin P](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Sandpiper location  
**Date:** Monday, April 25, 2016 11:26:03 AM

---

As residents of Ten Mile Lake, Hackensack, MN, my husband and I are very concerned about the proposed location of the Sandpiper and Line 3 replacement route. We know this has the potential to impact our watershed and many others in Minnesota's lake country including those of the wild rice waters. Please be sure that a full Environmental Impact Statement is done by the DNR and MPCA jointly. We don't think the DOC is the agency that should be involved with this.

Karin Arsan  
4817 Boone Point Road NW  
Hackensack, MN, 56452

(218) 675 6247



**From:** [kay\\_bea\\_Jones](#)  
**To:** [\\*EOB\\_Pipelines](#)  
**Subject:** Sandpiper pipeline concern from MN property owner  
**Date:** Monday, April 18, 2016 6:33:23 PM

---

“The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake. We need a full Environmental Impact Statement. Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint ‘Responsible Governmental Responsibility Unit’ made up of the DNR and MPCA.”

this is vital to the long-term viability and beauty of our Minnesota lakes region and our grandchildren's future

thank you for your consideration and responsible action.

kay bea jones

--



**Kay Bea Jones**

Professor

**Knowlton School of Architecture** Architecture

236 Knowlton Hall, 275 West Woodruff Ave, Columbus, OH 43210

614-292-9449 Office / 614-292-7106 Fax

[jones.76@osu.edu](mailto:jones.76@osu.edu) [osu.edu](http://osu.edu)

**From:** [Randy Rebers](#)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Sandpiper Pipeline  
**Date:** Tuesday, April 19, 2016 7:56:43 PM

---

Dear State of MN-Environmental Quality Board,

The proposed Sandpiper and Line 3 Replacement route has the potential to impact my watershed and property on Ten Mile Lake.

A full Environmental Impact Statement is needed to provide a proper due diligence for the future of the State of MN.

Please relieve the DOC from the responsibility of an Environmental Impact Statement and replace it with a joint 'Responsible Governmental Responsibility Unit' made up of the DNR and MPCA.

Sincerely,

Randy Rebers  
3982 64<sup>th</sup> Ave NW  
Hackensack, MN 56452  
612-860-5583

**From:** [Jeff Kletscher](#)  
**To:** [\\*EOB Pipelines](#); [brian.napstad@co.aitkin.mn.us](mailto:brian.napstad@co.aitkin.mn.us); [Env Review \(EOB\)](#)  
**Subject:** Sandpiper/Line 3 Replacement RGU change  
**Date:** Monday, April 25, 2016 5:43:05 PM

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April 22, 2016

Mr David Fredrickson, Chair  
Board Members  
Minnesota Environmental Quality Board  
520 Lafayette Road North  
St. Paul MN 55155

Re: Change in RGU for Sandpiper and Line 3 Replacement

Chair Fredrickson and Board Members,

I am writing to encourage you to **NOT** approve a change in the Responsible Governmental Unit for the proposed Sandpiper Pipeline and proposed Line 3 Replacement Pipeline.

Minnesota Rules 4410.4400, Subp. 24 designates that the The Minnesota Public Utilities Commission is the Responsible Governmental Unit for both requests, and it makes **NO** sense to not follow the process as it has been established.

As the Mayor of the City of Floodwood, I have provided verbal testimony and written comments on numerous projects in which the Minnesota Public Utilities Commission has been the Responsible Governmental Unit. They have always acted fairly and followed the law and rules regarding their work.

Minnesota Public Utilities Commission is fully qualified and capable of completing the work that is required to make a determination regarding the Sandpiper Pipeline and Line 3 Pipeline Replacement. They have fairly evaluated other such proposals in the past, and there is absolutely **NO** reason to believe they cannot do that again.

Sincerely,

Jeff Kletscher  
304 W 8<sup>th</sup> Avenue  
PO Box 86  
Floodwood MN 55736  
Phone: 218-348-3334

**From:** [mike gragert](#)  
**To:** [\\*EQB Pipelines](#)  
**Subject:** Sandpiper/Line3 EIS-RGU  
**Date:** Monday, May 02, 2016 4:27:08 PM

---

To EQB of MN  
Emily MN Roosevelt Lake

5/2/16

Dolores & Mike Gragert

After reading FOH Motion to order DOC renegotiate MOU and create Expert advisory council ,dated 3/9/16,We couldn't agree more with the Motion. And hope for the sake of Headwaters of Roosevelt Lake You will consider changing RGU to DNR & PCA.  
Thanks,Dolores & Mike

**From:** [llawf@tds.net](mailto:llawf@tds.net)  
**To:** [\\*EOB Pipelines](#)  
**Subject:** Second submission : Change in RGU - Pipeline  
**Date:** Friday, April 29, 2016 12:03:14 PM  
**Attachments:** [RGU - Pipeline EOB.pdf](#)

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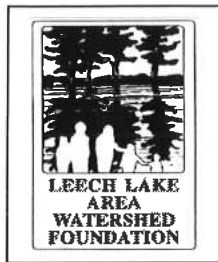
To Whom It May Concern~

I am re submitting our comment letter. It appears something happened with our first submission, it did not appear in any Board Packet that I reviewed.

Thanks for your consideration!

~ Lindsey

Lindsey Ketchel  
Leech Lake Area Watershed Foundation



## *Leech Lake Area Watershed Foundation*

PO Box 455  
 Hackensack, MN 56452  
 218-675-5778  
[www.lccchlakewatershed.org](http://www.lccchlakewatershed.org)

Tax ID # 41-1887906

Mr. David Fredrickson, Chairman  
 Minnesota Environmental Quality Board  
 520 Lafayette Rd  
 St. Paul, Minnesota 55155

Re: Request for Change in RGU Designation for Environmental Review of North Dakota Pipeline Company's Proposed Sandpiper Pipeline and Enbridge Energy's Line 3 Pipeline Replacement Projects from the PUC and DOC to MDNR and MPCA.

Dear Chairman Fredrickson,

The Leech Lake Area Watershed Foundation (LLAWF) works to preserve and protect the lakes, streams and rivers; healthy forests; fish spawning areas; and vital wildlife habitats of the Leech Lake watershed and surrounding region of North Central Minnesota. We conserve the sensitive lands and shorelands from future development and permanently protect these areas as valuable fish and wildlife habitat. In the summer of 2015 LLAWF began hosting the Northern Water Alliance of MN. The Alliance is a recently formed network of organizations and individuals engaged in protecting our northern water resources. The Alliance seeks to educate, mobilize, empower, advocate, and take action around issues and threats to our water.

As we stated in earlier correspondence, we are writing to express our concerns about the proposed Enbridge Sandpiper pipeline. While we appreciate the importance of adequate energy resources for the country, the proposed Enbridge Sandpiper pipeline route would include a segment through the sensitive natural resources of north central Minnesota's premier lake country where a potential pipeline leak could do serious harm to the ecosystem and the regional economy. We are formally requesting for a change in RGU designation for Environmental Review of North Dakota Pipeline Company's proposed Sandpiper Pipeline and Enbridge Energy's Line 3 pipeline replacement projects from the Public Utilities Commission (PUC) and the Department of Commerce (DOC) to the Department of Natural Resources (DNR) and Pollution Control Agency (PCA).

It is our understanding that, during the PUC's March 24th meeting, they will hear petitions for reconsideration of the timing of the environmental impact statement (EIS) for the Sandpiper and Line 3 cases as well as the White Earth Band of Ojibway's outstanding motion in the Sandpiper dockets. We are writing to urge you to cease and amend the current process led by the Department of Commerce (DOC) to embark upon an EIS for the proposed Sandpiper Pipeline (North Dakota Pipeline Co.) and the proposed Line 3 Replacement and Relocation (Enbridge Corp.). Our reasoning:

- The DOC is conducting a very limited and insufficient environmental review process. That process does not conform to the standards required by the Minnesota Environmental Policy Act ("MEPA");
- The DOC has allowed Enbridge Corporation to prepare the scope of an environmental assessment worksheet ("EAW") that would form the foundation for an EIS. At best, this process is a conflict of interest; at worst, it is a violation of MEPA;
- Minnesota law requires a technical advisory committee. Such a committee would address many potential problems, as well as assure transparency and participation that the public must have. To date such a committee has not been formed;

- This EIS will be the first pipeline EIS the State of Minnesota has prepared. *It will become the standard for all others.* Agencies that must be involved: DNR, MPCA, Tribal Governments, as well as the public. It would be advantageous to also include the US Geological Survey, EPA, and US Army Corps of Engineers; and
- Consideration must be made to include issues related to the Native American treaties of 1855 & 1837. Federal and Local agency involvement and expertise must be a priority. We must get this right.

The Leech Lake Area Watershed Foundation and Northern Water Alliance partners are concerned with all matters that might put our northern land and water at risk. The current route for this new energy corridor puts too many lakes, rivers, wetlands, wild rice lands, and Tribal lands at risk. We believe that the DNR and the PCA have the best expertise to manage the EIS process.

We feel strongly that a complete and thorough EIS will show that the proposed route for an Energy Corridor chosen by Enbridge Corporation is not in the best interest of the State of Minnesota. It has the potential to jeopardize:

- Our clean water source for drinking and recreation;
- Our tourism business and fishing lakes and rivers that support 261,000 jobs and \$13 billion dollars annually;
- Our wild rice lands that are the largest in the world and that many depend upon for livelihood and food. They cannot be recovered once tainted; and
- Our critical watersheds – Minnesota has 3 of the 4 North American watersheds to the Hudson Bay, Atlantic Ocean and Gulf of Mexico.

Thank you for your careful consideration of the foregoing concerns and your service to the citizens of the State of Minnesota.

Respectfully submitted,



Lindsey Ketchel

Executive Director, Leech Lake Area Watershed Foundation

Cc: Will Seuffert, Executive Director, Minnesota Environmental Quality Board  
 Dan Wolf, Executive Secretary, Minnesota Public Utilities Commission  
 Mike Rothman, Commissioner, Division of Energy Resources,  
 Minnesota Department of Commerce  
 John Linc-Stine, Commissioner, Minnesota Pollution Control Agency  
 Tom Landwehr, Commissioner, Minnesota Department of Natural Resources

**From:** [Cano, Alondra](#)  
**To:** [\\*EQB Pipelines](#)  
**Cc:** [Gomez, Aisha](#); [Artichoker, Coya H](#)  
**Subject:** Submitting Comments for EQB RGU on Sandpiper/Line 3  
**Date:** Monday, May 02, 2016 3:51:04 PM  
**Attachments:** [Minneapolis City Council Comments on EQB and Sandpiper Line 3 Final.pdf](#)

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Dear EQB,

Attached please accept our joint comments on this sign-on letter regarding the RGU decision for the Sandpiper/Line 3 crude oil pipeline project.

If you have any questions about these comments or the attached letter please do not hesitate to contact me.

Thank you,

Alondra

**Alondra Cano | Ninth Ward Minneapolis City Council Member**

350 South 5th Street – Room 307 | Minneapolis, MN 55415-1382  
612.673.2209 | [alondra.cano@minneapolismn.gov](mailto:alondra.cano@minneapolismn.gov) | [www.ci.minneapolis.mn.us/ward9](http://www.ci.minneapolis.mn.us/ward9)





350 S. Fifth St. - Room 307  
Minneapolis, MN 55415  
TEL 612.673.2200

[www.minneapolismn.gov](http://www.minneapolismn.gov)

May 2, 2016

Mr. David Fredrickson, Chairman  
Minnesota Environmental Quality Board  
520 Lafayette Rd  
St. Paul, Minnesota 55155

Re: Comment response for EQB to relieve  
PUC/DOC as RGU in favor of PCA and/or DNR  
For Sandpiper and Line 3 Replacement pipelines

Dear Chairman Fredrickson,

We are writing today as Minneapolis City Council Members who sit on the City's Health, Environment, and Community Engagement Committee to provide comments for the EQB to relieve the Minnesota Public Utilities Commission (MPUC) of its current Responsible Government Unit (RGU) status for the above-entitled projects and replace it with a joint RGU consisting of the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (MDNR). We understand that Minnesota Rules 4410.0500, Subp. 6 allows for selection of the RGU for environmental reviews and that the EQB may designate "a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project." We also know that last year the EQB established a precedent for this type of request when it changed the RGU from Hennepin County to the MDNR for an environmental review process for a lock and dam scour repair concluding that the DNR had greater expertise.

We appreciate the opportunity that you are providing for citizens to weigh in on the important decision about who the RGU should be in the Environmental Impact Statement (EIS) process for the Sandpiper/Line 3 crude oil pipeline. Thank you for taking the time to consider our perspective on this issue. While one may think that Minneapolis faces no impact from this decision because we are situated many hundreds of miles from the proposed route of these two pipelines, the opposite is true. The proposed pipelines will put Minnesota's pristine waters in harm's way and because our waterbodies are all connected, we know this will impact Minneapolis and its residents. Additionally, our ancient wild rice beds – which economically sustain American Indian families in our city – will be threatened by the establishment or expansion of these crude oil lines.

We stand with the eleven Tribal nations that share geography with the State of Minnesota and many community-based environmental organizations, including Honor the Earth and MN350, in asking you to reconsider the Department of Commerce (DOC) as the RGU. Instead, we believe that it would be a

common sense approach to put our environmental regulatory agencies, the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR) in charge of the EIS process.

The Department of Commerce (DOC) does not regulate pipelines or oil. Nor is it an agency that is charged with environmental protection or protecting public health; instead it facilitates and regulates business and capital flow in our state. These are incredibly important functions but in our opinion MPCA and the DNR, as the agencies charged with stewardship of natural resources and environmental regulation, have long demonstrated the requisite expertise and experience necessary to produce an EIS with the breadth, depth, and quality required for these projects which are so important to our state. We are also aware that the DOC/PUC instead produced an inadequate environmental study that the Minnesota Court of Appeals ruled was a violation of state law.

Finally, Minneapolis is home to thousands of citizens of the Tribal nations who are signatories of the 1855 treaty with the State of Minnesota. As a City Council, we represent citizens of the White Earth, Leech Lake, and Mille Lacs bands of Ojibwe who are active on this issue and are seeking this change. We have been informed that there has been a lack of meaningful consultation with Tribal governments arguing for an EIS. As the first Minnesotans who maintain treaty-defined rights, even on ceded territories, and are the original stewards of this land, the relationships with tribal governments require special care and expertise. Both the PCA and DNR are subject to Governor Dayton's Executive Order 13-10 which outlines the requirements of Tribal consultation and have dedicated staff liaisons, existing relationships, and protocols in place. The DOC has an exemption from this executive order and does not have a comparable level of institutional history and capacity to navigate the complex and critical relationships with Minnesota's Tribal Governments.

For these reasons, we believe the RGU should be changed for Sandpiper/Line 3 to the PCA and DNR because they have greater expertise in analyzing the potential impacts of the project and protection of the environment. Again, we thank you for the opportunity to share our thoughts about the disposition of the RGU.

Respectfully,



Lisa Bender  
10<sup>th</sup> Ward Council Member



Cameron Gordon  
2<sup>nd</sup> Ward Council Member  
Chair, Health, Environment and Community  
Engagement Committee



Alondra Cano  
9<sup>th</sup> Ward Council Member



Andrew Johnson  
12<sup>th</sup> Ward Council Member  
Vice Chair, Health, Environment and  
Community Engagement Committee

**From:** [Cano, Alondra](#)  
**To:** [\\*EQB Pipelines](#)  
**Cc:** [Thane Maxwell](#)  
**Subject:** UPDATED Minneapolis City Council Comments on EQB RGU on Sandpiper/Line 3  
**Date:** Monday, May 02, 2016 4:18:50 PM  
**Attachments:** [Minneapolis City Council Comments on EQB and Sandpiper Line 3 Final.pdf](#)

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Dear EQB,

This is the most UPDATED letter and comments from Minneapolis Council Members signed by Council Members Cam Gordon, Andrew Johnson, Lisa Bender, Jacob Frey and myself. The previous letter/comments was missing Council Member Frey's name.

Thank you for taking these comments and for acknowledging the most updated version of this letter.

If you have any questions about this letter or its content please do not hesitate to contact me.

Respectfully,

Alondra

**Alondra Cano | Ninth Ward Minneapolis City Council Member**

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12<sup>th</sup> Ward Council Member  
Vice Chair, Health, Environment and  
Community Engagement Committee



Jacob Frey  
3<sup>rd</sup> Ward Council Member