

# FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA RESERVATION BUSINESS COMMITTEE LEGAL AFFAIRS OFFICE



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July 10, 2017

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The Honorable Ann O'Reilly

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 Enbridge Energy,  
Limited Partnership for a Certificate of Need for the  
Line 3 Replacement Project in Minnesota from the  
North Dakota Border to the Wisconsin Border

OAH 65-2500-32764

MPUC PL-9/CN-14-916

In the Matter of the Application of Enbridge Energy,  
Limited Partnership for a Routing Permit for the  
Line 3 Replacement Project in Minnesota From the  
North Dakota Border to the Wisconsin Border

OAH 65-2500-33377

MPUC PL-9/PPL-15-137

Dear Judge O'Reilly:

Enclosed please find the comments on the Draft EIS of the Fond du Lac Band. An Affidavit of Service and Proof of Service are also enclosed.

If you have any questions, please contact me at 218-878-7393.

Respectfully,

A handwritten signature in blue ink, appearing to be "Seth Bichler".

Seth Bichler (MN # 0398068)

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**State of Minnesota  
Office of Administrative Hearings  
For the Public Utilities Commission**

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**Fond du Lac Band of Lake Superior Chippewa Comments on Draft  
Environmental Impact Statement**

**To:** The Fond du Lac Band of Lake Superior Chippewa respectfully submits these comments to Administrative Law Judge O'Reilly and to all parties.

**Introduction:** The Fond du Lac Band of Lake Superior Chippewa ("Band") is no stranger to pipeline development, hosting several existing crude oil pipelines, including the existing Line 3, on its reservation in Northeastern Minnesota. The pipelines currently running through the Band's reservation and ceded territories (1854, 1842, & 1837) have been known to lead to the introduction of damaging invasive species due to extensive surface work needed to keep the pipeline corridors free of large vegetation such as trees. The Band has experienced a fragmentation of its reservation and ceded territories by pipeline and other industrial development, such as transmission lines and large mining operations. The extent of any currently undetected leaks and spills will likely remain unknown unless and until currently existing pipelines are deactivated and removed.

The Band, having carefully reviewed the draft environmental impact statement and participated in hearings conducted by the Minnesota Department of Commerce, is not convinced of the need for this project. Projects completed in recent years by the applicant have dramatically expanded the capacity to transport oil, by pipeline, across the 1854 ceded territories and the Fond du Lac Reservation. Even if the existing Line 3 were taken completely offline and not "replaced" by this expansion proposal, there is more than enough oil coming into Minnesota markets from other pipelines. Further, the need calculation must take into account the ample evidence presented that oil from the Canadian tar sands region in Alberta is among the most environmentally harmful sources of oil known to the world. Tar sands oil is unique in its

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extremely high energy tab just to get the product from the ground through strip mining and application of steam and chemicals. The market needs oil for the present time, but there are better sources of oil than the tar sands. It should also be noted that the dramatic evolution of renewable energy and electric vehicle development in recent years stands to likely reduce overall demand for oil in the near future.

In the event that the Public Utilities Commission ultimately decides that there is a need the project to go forward, the Band maintains that any pipeline should avoid the Lake Superior Watershed. It is worth noting that this proposed project threatens the headwater regions of the two largest watersheds in North America, the St. Lawrence/Great Lakes and the Mississippi. While the religious, spiritual, and cultural significance of Lake Superior to the Band cannot be overstated, it should be obvious enough to the broader population that the largest freshwater lake in the world must be protected. Introducing a new potential source of heavy crude pollution into the Great Lakes Basin would be a mistake. For these reasons, if the Commission ultimately decides that there is a need for this pipeline, the Band respectfully requests that routes such as System Alternative 04 (SA-04), get further scrutiny. Ultimately, the final route should stay away from the Lake Superior basin. There is no need to further fragment the 1854 Ceded Territories of the Band and public forests of Northeastern Minnesota with a new pipeline corridor into the Lake Superior Watershed. Other routes are available.

The Bands comments on specific sections of the DEIS are as follows.

**Executive Summary** (page ES-19): The production of tar sands oil (aka Western Canadian Sedimentary Basin) emits three to four times more greenhouse gas emissions than ordinary oil, according to a 2008 report by the US Department of Energy. The Executive Summary states this under its discussion of Full Displacement on page ES-19 – “The process of extracting and upgrading heavy crudes requires much greater energy input (and GHG emissions) than extracting and upgrading light crudes...” however no conclusion is drawn from this statement. The Band’s conclusion is that these heavy crudes located in extremely remote locations far from markets are perhaps not the best source of energy for the economy in light of the extreme hazards brought about by climate change.

Additionally, tar sands contain a variety of toxics, including benzene and styrene and releases of these toxics into the environment near Edmonton, Canada, have led to increased rates of leukemia and childhood lymphohematopoietic cancers <sup>1</sup>.

## **Chapter 2 – Project Description**

**Project Description:** There is no mention regarding the need to weigh down the pipe in wetland and stream/river areas. In previous pipeline construction projects conducted by Enbridge (i.e., Alberta Clipper and Southern Lights), the contractor conducting the project employed two

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<sup>1</sup> NRDC Issue Brief, February, 2014 IB:14-02-B. Tar Sands Crude Oil: Health Effects of a Dirty and Destructive Fuel

different methods to add weight to the pipe. One was the use of a concrete coating on the pipe, while the other was to employ the use of gravel-filled saddle bags which hung over the pipe. The practice of adding weight to the pipe in certain areas should have been included in the project description, including the methods to be employed.

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**Section 2.3.2.3 – Cathodic Protections Systems – Cathodic Protection Would be Installed Within a Year After Construction** (page 2-12): Each location of cathodic protection, also requires electrical power (usually a power point on-site) and an area for a maintenance vehicle to park. Neither of these two items is stated in the “aboveground features in the second paragraph in this section. Also, it is the Band’s experience that these cathodic protection system features are often located in wetlands. However, since they are not installed during the construction phase of the project, the wetland impacts are not accounted for in the applicant’s wetland permit application to the U.S. Army Corps of Engineers. Enbridge then submits an application at a later date to account for these additional wetland impacts. In short, the applicant is piecemealing their impacts. This goes against the notion that the project is a single and complete project.

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**Section 2.7.1.5 – Clearing and Grading – Shrubs, Trees, and Rocks Would Be Removed and Disposed of in Accordance with the Environmental Protection Plan** (second paragraph; page 2-24): The DEIS states: “Non-merchantable wood could be burned if Enbridge obtains the appropriate permits and approvals from the Minnesota Department of Natural Resources (Minnesota DNR).” If it is possible that Enbridge would burn some of the woody material cut from the work areas, then the amount of CO2 resulting from this burning should be calculated in the Climate Change section of the EIS.

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**Section 2.7.1.5 – Clearing and Grading – Erosion and Sediment Control Devices Would Be Installed after Clearing but Before Grading** (first paragraph; page 2-25): The DEIS states: “...installing devices...sediment barriers to prevent sedimentation from leaving the construction area (such as silt fencing and straw bales).” It has been the Band’s experience from a previous Enbridge pipeline construction projects (i.e., Alberta Clipper and Southern Lights) that Enbridge “environmental crews” would always install silt fence in straight lines to save time. In many cases this did NOT prevent sediment from leaving the site because for silt fence to work properly it MUST pond water in order for the sediment to drop out of the ponded water. This type of work practice is a concern.

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**Section 2.7.1.6 – Topsoil Stripping** (first paragraph; page 2-25): It is stated “Enbridge proposes that topsoil would be stripped and segregated to maintain the integrity of the existing seed bed in cropland, hayfields, pastures, government set-aside program areas, and other areas as requested by the landowners...” The fact that forested and shrub areas are not mentioned is concerning. The Band has found that the segregation of topsoil from forested and shrub areas is also essential in order for the germination and survival of seed once the topsoil has been restored. This is due to the organic-rich humus layer, which contain essential microbes, fungi, and nematodes in the

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topsoil that many plants are dependent upon for survival. The Band proposes that the Applicant be required to maintain the integrity of the existing seed bed in forested and shrub areas as well.

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**Section 2.7.1.6 – Topsoil Stripping** (third paragraph; page 2-25): It is stated “If seasonal or other conditions prevent replacement within 14 days, temporary ECDs would be installed and maintained until conditions allow the replacement.” It is the Band’s experience that this BMP did NOT happen during the Alberta Clipper/Southern Lights project, where all stockpiled soils (topsoil and subsoil) were unprotected from erosion (in some cases for many months) causing some soil to wash into areas outside of the work zones during storm events. This type of work practice is a concern.

**Section 2.7.1.11 – Lowering-In and Backfilling – Lowering-In and Backfilling Would Be Conducted so as to Minimize Effects on Sensitive Resources** (first paragraph; page 2-27): It is stated “To best protect sensitive resource areas such as wetlands or waterbodies, trench breakers would be installed...” During Enbridge’s Alberta Clipper and Southern Lights projects, Enbridge employed two methods of trench breakers – sandbags and sprayed on foam. However, the Minnesota Pollution Control Agency did not certify the use of sprayed on foam in their Clean Water Act Section 401 Water Quality Certification due to the concern that by-products from this foam material could leach into adjacent waters since many slope areas where the trench breakers were utilized sloped down to wetlands or waterbodies.

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**Section 2.7.1.11 - Lowering-In and Backfilling – Lowering-In and Backfilling Would Be Conducted so as to Minimize Effects on Sensitive Resources** (third paragraph; page 2-28): It is stated “The backfilled trench would be compacted to minimize settlement.” This is a concern since compacted soil generally does not contain adequate air space for the growing plants to thrive since it is often difficult for plant roots to penetrate compacted soil. This often leads to the eventual death of the plant, or in some cases, the plant survives only by growing roots very near the surface. In that case (root growth only near the surface), this leads to a much greater potential for soil erosion. Although in a subsequent section (Section 2.7.1.14 Cleanup, Restoration, and Revegetation) it is stated that the work area would be regarded, it appears that only compacted soils in cultivated areas would be Enbridge’s concern.

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**Section 2.7.2.6.3 – Cleanup and Revegetation – If Winter Weather Impedes Cleanup, Enbridge Could Install Erosion Control Devices** (page 2-32): In the Band’s experience from Enbridge’s Alberta Clipper and Southern Lights projects, the replacement of frozen backfill material is problematic. Since the material is frozen in large chunks, it allows too much air space between the chunks. When this material thaws in the spring, it causes subsidence, which then becomes a ditch, allowing water flow in the wetland to be altered. In addition, the installation of winter “dormant seeding” and mulch is ineffective, since it tends to become a deer and bird feeding program.

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**Section 2.7.2.7 – Waterbody Crossings – Proposed Crossing of 242 Waterbodies Would Require Regulatory Approvals** (page 2-32): It states “The types of methods that could be used include wet trench, dam and pump, flume, and HDD or guided bore.” It is the Band’s experience that Enbridge has a history of changing their waterbody crossing method without notifying the appropriate regulatory agency. In the Band’s case, Enbridge’s wetland permit application to the Band (under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance) for their Alberta Clipper and Southern Lights projects specifically stated that all waterbody crossings would utilize the wet trench (open cut) method. However, after receiving their permit from the Band, Enbridge typically employed the HDD method for Southern Lights (a 20 inch pipeline) and either wet trench (open cut) or dam and pump methods for Alberta Clipper (a 36 inch pipeline). However, the Band did not receive notification of any of these changes in construction method. The only way the Band learned that these changes had been made was by visual discovery by an inspector employed by the Band.

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**Section 2.7.2.7.1 – Clearing and Grading** (first paragraph; page 2-33): It is stated “In addition, grading could be necessary on the banks of some waterbodies to install temporary bridges across the waterbodies.” In the Band’s experience, this practice needs to be avoided. The footings for the bridge should be placed 5-10 feet away from the bank of the waterbody, otherwise grading and placement of bridge footings on the bank can cause subsidence and/or compaction of the waterbody bank. This compaction and/or subsidence often lead to water scouring of the waterbody bank, eroding the bank and sending sediment downstream.

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**Section 2.7.2.7.1 – Clearing and Grading** (third paragraph; page 2-33): It is stated “Enbridge may be required to trap beavers or alter or remove beaver dams to lower water elevations within the Project corridor prior to construction.” And “To alter a beaver dam, a perforated steel culvert, or equivalent device, would be inserted through the dam to facilitate water drainage.” Control of beavers by these methods is often (if not always) a slippery slope. In the Band’s experience, removal of beavers simply “just rearranges the neighborhood.” In addition, the use of a “perforated steel culvert, or equivalent device” (often call “pond levelers” or “beaver bafflers”) are commonly ineffective. When they are effective, the ecology of the surrounding stream and adjacent wetlands is altered, leading to indirect wetland impacts that are not accounted for in permit applications.

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**Section 2.7.2.7.3 – Trenching and Installation** (fourth bullet point – HDD; page 2-34): It should be discussed in this part that “physical disturbance” of the wetland or waterbody feature is possible if there is a “frac-out” of the drilling mud into the wetland or waterbody. It cannot be stated definitively that this method does not cause a physical disturbance.

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**Section 2.7.2.7.3 – Trenching and Installation** (last bullet point – Guided bore; page 2-34): It is stated “It is not suitable...where water tables are near the surface...” This may not be true. During construction of the Alberta Clipper project, Enbridge used a guided bore to cross under Minnesota Highway 210 and the BNSF Railroad on the Fond du Lac Reservation. There were

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wetlands on both sides with a high water table. Enbridge installed numerous temporary wells in the wetlands to pump the water and lower the water table during the guided bore operation.

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**Section 2.7.2.7.4 – Restoration and Revegetation – Enbridge Would Restore and Revegetate Water Crossings and Would Stabilize Streambanks** (first paragraph; page 2-35): The DEIS states: “Such restoration and revegetation are generally not necessary when using the HDD method, which does not generally disturb surface features.” This statement as written is incorrect. HDD generally does not disturb the water crossing surface features. However, the surface is disturbed at both the entrance point and exit point of the HDD. During the Southern Lights project, Enbridge used an excavator to dig a hole to the desired depth of the pipeline at both the entrance point for the HDD and the exit point. These excavations often remained open for a week or more until the “tie-in crew” could weld the HDD installed pipeline to the remaining pipeline installed using more conventional methods.

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**Section 2.7.2.7.4 – Restoration and Revegetation – Enbridge Would Restore and Revegetate Water Crossings and Would Stabilize Streambanks** (third paragraph; page 2-35): It is stated “Enbridge would stabilize a 50-foot buffer on either side of the waterbody crossings using a temporary seed mix (consisting of vegetation such as annual rye or annual oats...” The use of annual rye should be avoided due to the allelopathic nature of annual rye (its roots release a chemical that inhibits the germination and/or growth of other plants). The Band suggests that a more appropriate mix of native plants be used for the purpose of stabilization of stream banks.

#### **Chapter 4 – Alternatives to the Proposed Project**

**Section 4.2.3 – Certificate of Need Alternative 1 – Continued Use of Existing Line 3 – Maintaining the Existing Line 3 Would Require 4,000 Excavations over the Next 15 Years** (first paragraph; page 4-6): It states “Enbridge has estimated that up to 4,000 integrity digs...would be required over the next 15 years of operation.” Since August 2006, it has been the Band’s experience that Line 3 has required the least number of maintenance digs within the external boundaries of the Fond du Lac Reservation. This is based on Exemption Certificates granted to Enbridge under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance (Ordinance #03-06). The following table illustrates the number of digs for each of the pipelines operated by Enbridge through the Reservation:

Enbridge Pipeline	Number of Maintenance Digs	Span of Time
Line 1	15	2006 - present
Line 2B	10	2006 - present
Line 3	3	2006 - present
Line 4	9	2006 - present
Line 13	2	2010 - present
Line 67	3	2010 - present

It can be seen by this table that Line 3 has needed the least number of maintenance digs than the other pipelines in the ground from 2006 until the present. Only Line 13, completed in 2010, has had fewer maintenance digs. The number of maintenance digs here are only along a 14-mile span of the Reservation from the Enbridge Mainline ROW. If the maintenance numbers were projected out over the entire length of the other aging pipelines (Lines 1, 2B and 4), it would suggest Enbridge has not maintained Line 3 to the same caliber as their other pipelines.

**Table 4.3-5 – Purpose and Location of Route Segment Alternatives (RSA-37; page 4-37):** Under the Location information for this table and RSA-37, it should be stated that this route segment alternative passes through the Fond du Lac Reservation, including headwaters to several Wild Rice lakes.

## **Chapter 6 – Existing Conditions, Impacts, and Mitigation – Route Permit**

**Table 6.2.1-9 – Land Use Zoning Categories Crossed by Route Alternative RA-08 (miles)** (page 6-20): Route Alternative RA-08 passes through the Fond du Lac Reservation which has its own Land Use Ordinance (Ordinance #02-07). This fact should be acknowledged in this table and the appropriate miles of each category should be included.

**Section 6.2.1.4.2 – Mitigation** (first paragraph; page 6-50): As stated in Comment #5 above, segregation of topsoil and subsoil in forested areas can help the re-establishment of trees. This aspect should be included here as an additional mitigation measure in forested areas impacted by the pipeline (temporary work areas, not the permanent right-of-way).

**Section 6.3.1 – Water Resources** (second sentence; page 6-151): It is stated “The analysis focuses on...public waters wetlands; ...” It should be noted that there are many more wetlands in Minnesota than ones designated as public waters wetlands. The analysis of only public waters wetlands artificially reduces the number of wetlands in the analysis. Many of these “discounted wetlands” perform the same functions as public waters wetlands and are equally important on the landscape, and therefore, should also be included in the analysis.

**Section 6.3.1.2.1 – Regulatory Context and Methodology – Regulatory Context** (beginning on page 6-185): This section discusses in depth Minnesota’s water quality regulations, but does not discuss, nor acknowledge The Band’s Water Quality Standards, which include use designations. The Band’s Water Quality Standards are applicable for both RA-07 and RA-08.

**Section 6.3.1.2.3 – Regional Analysis of the Quality of Existing Surface Water Conditions – Tullibee Lakes** (pages 6-216 and 6.217) **and Wild Rice Lakes** (page 6-216): It is interesting to note that stressors to the loss of Tullibee lake, as well as conservation efforts is discussed, when in the Wild Rice Lakes section, neither the stressors to the loss of wild rice, nor any conservation efforts are discussed. Both species are utilized as food sources by Band members, a discussion of the stressors and conservation efforts for Manoomin, (Wild Rice) would be appropriate here.



**Section 6.3.1.2.4 – Impact Assessment - Degradation of Surface Water Quality** (third paragraph; page 6-224): Along with other potential spills, this section discusses the storage of HDD installation drilling mud and its proper disposal to prevent spills of this material. However, this paragraph neither discusses, nor acknowledges the potential for drilling mud to rapidly enter surface water during an inadvertent release or “frac-out” situation. Trout streams are particularly vulnerable to this type of spill. At a minimum, this paragraph of the Impact Assessment should indicate that drilling mud releases are discussed below in another portion of this section.

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Also in this paragraph, it should be mentioned that any spill of five gallons or greater must be reported to the State Duty Officer immediately and that a report containing a description of the incident, cause of the spill, and measures taken to prevent such spills in the future, must be submitted to the proper agency (MPCA) within 30 days of the incident.

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**Section 6.3.1.2.4 – Impact Assessment – Degradation of Water Quality and Habitat from Drilling Mud Releases during HDD Crossings** (pages 6-226 thru 6-227): This section fails to mention that during HDD installations the larger diameter of the pipeline, the larger the risk for an inadvertent release of drilling mud. This is because multiple pilot holes in progressively large diameters are necessary to reach the 36-inch diameter required for this project. Each drilling of a pilot hole poses a risk and therefore, multiple pilot holes in increasing diameter, increases this risk. It is the Band’s experience that out of five HDD installation of Southern Lights (a 20-inch pipeline now designated as Line 13), one inadvertent release occurred on the Reservation (a trout stream and adjacent wetlands) requiring approximately 50 workers, the set up of an emergency dam and pump operation, four vacuum trucks, and over eight hours of time for clean-up operations. Additional time was required for restoration work at the site. As mentioned above, it is interesting to note that Enbridge chose to conduct HDD installation on the Fond du Lac Reservation of the 20-inch pipeline (Southern Lights – Line 13), while conducting only open cut installations at each of the same crossings for the 36-inch pipeline (Alberta Clipper – Line 67). Therefore, it can be concluded that the selection of crossing method (HDD vs Open cut) is not for protection of ecological resources, but rather cost (the larger the pipe, the more HDD costs).

The Band’s experience shows the occurrence of a major frac-out of 20% with a 20-inch pipeline. The Slade (2000) reference discussed in the document shows an 18% chance of a major incident, with only a 16-inch pipeline. Drilling mud release incidents are likely to be much higher with HDD installation of a 36-inch pipeline as proposed by the applicant.

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**Section 6.3.1.2.4 – Impact Assessment – Disturbance of Wild Rice Waterbodies** (second paragraph; page 6-229): It is stated “Although the Applicant would restore the hydrology and soils of the affected wild rice waterbodies after construction, rice yield would be reduced in the portion of the waterbody directly affected by the repair or replacement activities for the first growing season after construction.” Because of the sensitivity of wild rice to substrate disturbance, altered pH of the water, and chemicals, and other disturbances, it is unlikely that wild rice would return after only one growing season, if it returns at all.

**Section 6.3.7.1.1—Regulatory Context and Methodology** (page 6-590) The DEIS states that the Band is currently seeking re-designation of the Reservation from Class II to Class I. While the Band has released a draft Technical Report and held a public comment period, we have not submitted an official application to the EPA for this action.

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**Section 6.3.7.3.1 –Impact Assessment** (page 6-594) The DEIS states that the Applicant would minimize dust generation from construction activities by wetting soils and limiting working hours in residential areas. Please address how Enbridge will ensure that sub-contractors will carry out these requirements. Will soils be wetted with water only or will other chemicals be used? What will be the decision point for wetting to take place? Please note that dust is not the only concern when talking about construction activities - diesel emissions are also released. While Table 6.3.7-4 includes diesel emissions, the text above does not mention them. The DEIS should also acknowledge that dust and diesel emissions are a concern not only during the major construction phase, but also whenever restoration and routine maintenance activities take place. These emissions should also be quantified.

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**Table 6.3.7-4 Estimated Construction Emissions for the Applicant’s Preferred Route in Minnesota** (page 6-595) estimates construction emissions for the preferred route. The Hazardous Air Pollutant (HAP) numbers seem too low and don’t address diesel particulate. This section should provide more details on how these emissions were calculated.

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From **Table 6.3.7-5**, it is not clear whether the estimated emissions from operations include emissions from vehicle idling related to restoration and routine maintenance activities. It is doubtful that they do, because the emissions from “vehicle combustion” are very low. It has been the Band’s experience that restoration and routine maintenance operations involve numerous heavy duty vehicles idling for extended periods of time. The following statement seems suspect – “Furthermore, operations emissions would consist primarily of VOCs, which are a precursor to the criteria pollutant ozone. VOC emissions cannot practically be modeled to show a source’s ozone formation given the regional transport nature of the pollutant”. Emissions from the idling of heavy duty diesel vehicles would include relatively high emissions of NOx and diesel toxics, including toxic particulates.

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**Table 6.3.7-7 Estimated Operations Emissions for Route Alternative RA-03 in Minnesota** (page 6-601) This table does not include emissions from vehicle combustion and unpaved roads, but the text does not explain why not. The same holds true for Tables 6.3.7-9, 6.3.7-11, and 6.3.7-13. Presumably these types of emissions would be unavoidable regardless of the route chosen and should be included.

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**Section 6.3.7.4.2 Mitigation** (6-612) This section discusses mitigation options. Additional options would be to use newer diesel vehicles or to retrofit older ones. These options are not mentioned and should be included.

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## **Chapter 7 – Route Segment Alternatives**

**Section 7.3.6 – Route Segment Alternative RSA-21** (beginning on page 7-21): Although this route segment alternative attempts to avoid impacts to Sandy Lake and wild rice waters directly downstream, it does impact other wild rice waters and streams. This alternative essentially illustrates that this important resource area should be avoided entirely. The remaining wild rice strongholds should be spared further industrial developments such as major pipeline projects.

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**Section 7.3.7 – Route Segment Alternative RSA-22** (beginning on page 7-25): Again, while this route segment alternative attempts to avoid impacts to Big Sandy Lake watershed, as well as several WMAs, it passes through the Fond du Lac Reservation, which is not an acceptable alternative.

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**Section 7.3.15 – Route Segment Alternative RSA-37** (beginning on page 7-48): It should also be noted that this route segment alternative passes through the southern portion of the Fond du Lac Reservation, intersecting at least one stream that leads to several wild rice waters. This is another reason this route segment alternative should be rejected. It also crosses into the watershed of the Moose Horn River, which eventually flows into the Kettle River and then the St. Croix River, where it is a boundary between Minnesota and Wisconsin. The St. Croix is protected by the US Park Service as a National Scenic Riverway, but some of its tributaries such as the Moose Horn and Kettle, are not. Any route segment alternatives, such as RSA-37 and the Applicant's preferred route, that introduce threats into the St. Croix watershed in the 1854 and 1837 ceded territories should be rejected.

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**Section 7.3.24 – Route Segment Alternative RSA-53** (beginning on page 7-70): While the text in the first paragraph describes this alternative to connect between RA-07 and RSA-21, Figure 7.3-24 depicts the connection from RA-07 to RSA-22, which therefore, does not avoid the Fond du Lac Reservation. Please clarify which connection (RSA-21 or RSA-22) is being proposed.

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## **Chapter 8 – Existing Line 3 Abandonment and Removal**

**Section 8.3 – Abandonment – Disconnecting the Pipeline** (page 8-3): This bullet point states "The pipeline's mainline valves would be closed and electrically disconnected so that they could not be operated." However, Line 3 contains some valves that are manually operated. Discussion should acknowledge this fact and Enbridge should explain the fate of these valves as well.

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**Section 8.3.1.3 – Subsidence – Long-Term Effects Could Be Significant and Would Require Site-Specific Mitigation Measures** (page 8-9): The discussion here, as well as other portions of this section, gloss over the steps Enbridge will take in the event of subsidence incidents by simply stating (numerous times) "monitoring, adaptive management, and mitigation measures."

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Granted, each subsidence event may be unique in where it occurs and the resource effected, but some examples of potential mitigation efforts should be discussed.

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**Section 8.3.1.5 – Cost (page 8-10):** It is stated “Costs for future site-specific mitigation measures...are uncertain and would depend on the nature of the mitigation measures.” Since Enbridge is unable to calculate the cost of these “mitigation measures” they should be required to provide adequate financial assurance to cover these costs in the event the company becomes insolvent. Northeastern Minnesota has already had enough experiences with decaying infrastructure from companies that no longer exist.

**Section 8.4.1 – Potential Impacts and Mitigation Measures – Cost (page 8-13):** Only the cost of removal is factored here. Used steel has value when recycled, therefore, the recycling of Line 3 steel should be factored into the actual cost of removal.

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## **Chapter 9 – Tribal Resources**

2617-44

**Section 9.4.4.1 – Tribal Lands – Fond du Lac Reservation (page 9-18):** The number of rivers or streams indicated may be inaccurate. During the permitting process with Enbridge’s Alberta Clipper/Southern Lights projects, Enbridge identified seven stream crossings and no water bodies. During a field inspection by the Band, only 5 stream crossings were identified. The other two had no flow at any time before and during the project (one has its source dammed up by Enbridge’s Line 4 being at ground level; the other was eliminated by road construction and inadequate culverts). The “waterbody” is most likely a flooded wetland complex as a result of Line 4 damming surface and subsurface flow.

**Section 9.4.4.1.1 – Natural Resources and Traditional Uses (page 9-19):** In this section, Sweet Grass - Wiingash and Cedar – Giizhig(aandag) are mentioned specifically as plants having cultural significance. However, many more plants are also very significant. The text should reflect that the two plants included in this section are for illustrative purposes and acknowledge there are many more that could be included.

2617-45

**Section 9.6.1 – Climate Change (beginning on page 9-27):** While this section discusses potential climate change impacts in a general sense, it should be noted here that the loss of a resource cannot be replaced. In other words, while many people affected by climate change can move to other areas to obtain the resources they need, the Ojibwe people cannot relocate since they are tied to their respective reservations and ceded territories.

2617-46

## **Chapter 10 – Accidental Crude Oil Releases**

2617-47

**Section 10.2.5 (page 10-22)** addresses spill probabilities. The section gives no information on the cost and after-effects of recent spills. Probabilities alone cannot convey the risk associated with pipeline operation. Also, Section 10.2.5.3 states “the frequency of a failure occurring along



the Applicant's preferred route could be interpreted as once every 5.7 to 7.2 years. Again, no information on the predicted impacts (both economic and environmental) is given. For example, the Kalamazoo spill that occurred in 2010 resulted in a \$177 million dollar settlement between Enbridge, the DOJ, and the EPA. This spill also resulted in the closure of a large section of the Kalamazoo River for almost two years and the displacement of 150 families<sup>2</sup>. Also, from Section 10.3.1.1.2, "little research has been conducted on the toxicity of dilbit to organisms". Section 10.3.1.1.2 also states "Heavy crude oils may lose up to 10 percent of their initial volume following a spill due to evaporation in the first few days". With the predicted probability of some kind of spill occurring at a frequency of every 5.7 to 7.2 years, the DEIS must estimate the evaporative losses of VOCs and toxics to the air during any such occurrence, using best guesses as to the release amount. It is unacceptable to simply state that the toxicity of dilbit to organisms is unknown, further research needs to be done.

2617-47  
Cont'd

2617-48

## **Chapter 11 – Environmental Justice**

**Section 11.4.1** mentions air emissions (dust and diesel combustion) due to construction, but again fails to mention restoration or routine maintenance activities. Band staff members have observed nearly constant idling of heavy equipment during these types of activities, therefore these emissions may not be "minor", as this section states. **Section 11.4.2** states that "operations impacts related to noise or air quality impacts from pump stations are not expected to disproportionately affect minority groups or low-income populations". This statement fails to grasp the reality of the situation, which is that idling releases large quantities of emissions all along the pipeline corridor and that many Native people suffer from asthma or COPD – both of which can be exacerbated by air pollution.

2617-49

Climate change is a problem and this project will increase GHG emissions. Climate change is expected to impact Native people harder than the general population because of the higher rates of asthma and because a higher percentage of Native people live in housing that may have mold in it.

On page 11-7, the EIS discusses impacts on air quality from pipeline construction and states that "Enbridge has identified various measures to limit these impacts, such as dust suppression, limiting idling by construction vehicles, and covering spoil piles". Please explain these measures in further detail, including how Enbridge intends to ensure that they will be implemented by sub-contractors. Also please explain whether these measures are currently taking place on Enbridge activities, including during restoration and routine maintenance work on the Fond du Lac Reservation and if not, why not. How does Enbridge define "limiting idling"? What sort of recordkeeping will be used for tracking this obligation? Are there plans for requiring the use of

2617-50

<sup>2</sup> Inside Climate News, David Hasemyer, July 20, 2016 – [Enbridge's Kalamazoo Spill Saga Ends in \\$177 Million Settlement](#)

clean diesel or late model equipment or for retrofitting current equipment with pollution controls?

2617-50  
Cont'd

Accidental release of crude near the Reservation could result in air impacts. The CDC's website ([www.cdc.gov/niosh/topics/montanaoilspill/response/default.html](http://www.cdc.gov/niosh/topics/montanaoilspill/response/default.html)) lists symptoms of excessive exposure that are air related. These include:

2617-51

- Eye, nose, and throat irritation
- Headache
- Dizziness
- Upset stomach
- Cough or shortness of breath

Additionally, respirators are listed on the CDC website as important Personal Protective Equipment for first responders to oil spills, indicating that there is an inhalation risk, if not from the crude itself then potentially from any diluent used. In addition to fumes from the product, if fires are present then protection from smoke is needed. Any people living or recreating near the pipeline could potentially be exposed to hazardous pollutants during a spill event.

As in previous sections of the DEIS, the Air Emissions section (12.3.1.3.2) doesn't address continued emissions from restoration or routine pipeline maintenance activities, namely from idling of heavy vehicles during these activities. Likewise, air emissions from Integrity Digs (Section 12.3.2.2.1) are not quantified. It is impossible to say whether these emissions are significant if they have not been quantified.

2617-52

## **Chapter 12 – Cumulative Potential Effects**

**Section 12.3.1.3.2** – make sure to state that anticipated emissions are “per year”. “Volatile Organic Compound Emissions Would Have Negligable Cumulative Potential Effect Compared to Actual Statewide Emissions” – Clean Air Act requirements depend on total predicted emissions over a period of time, not on how these numbers compare to statewide emissions.

2617-53

**Section 12.3.5.3** discusses a new truck facility. Are there plans to limit idling by trucks, perhaps by eliminating bottlenecks? Are there plans to require trucks to use clean diesel or late model trucks which emit less pollution? Likewise, in Section 12.3.7, would low sulfur diesel fuel and clean vehicles be used?

2617-54

**Section 12.5** discusses cumulative potential effects on climate change. While it is true that climate change is not attributable to any one action, but to many individual actions, an analysis of this project still shows that large emissions of greenhouse gases are expected.

2617-55

**Section 12.5.1** briefly mentions that air quality will be impacted by a warmer, wetter climate but doesn't give a full description of the expected impacts. Ozone levels are expected to rise under a

2617-56

warmer climate, as the atmospheric reactions that lead to the creation of ozone take place at a greater rate at higher temperatures. Forest fires are expected to increase in the Western US and Canada, as those parts of North America are expected to experience much dryer conditions. Smoke from these fires can cause poor air quality in Minnesota. Additionally, heat stress can adversely impact those who are most vulnerable to air pollution – the elderly, children, and those who are already experiencing asthma or COPD. These health conditions are also expected to be exacerbated by allergens caused by longer growing seasons and possibly from increased populations of invasive species. Although this is alluded to, please specify that increased humidity will lead to increased mold levels in homes, which can aggravate asthma or cause allergic reactions.

2617-56  
Cont'd

**Section 12.3.2.2.1** states that integrity digs would have only minor, temporary effects on air quality. As stated above, it has been the practice of Enbridge and its contractors (as observed by Fond du Lac Environmental staff) to allow day-long idling of construction vehicles in cold weather, regardless of whether the vehicles are actually in use. This practice can release several tons of emissions per day. No quantitative analysis of these types of emissions has been performed in this chapter.

2617-57

**Section 12.5** addresses cumulative greenhouse gas emissions. Again, emissions from idling are a concern. This is an area where large reductions could be made by implementing a no-idling, or reduced idling, policy.

2617-58

This concludes the comments of the Band on the Draft Environmental Impact Statement.

FOND DU LAC BAND OF LAKE SUPERIOR  
CHIPPEWA



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## AFFIDAVIT OF SERVICE

**Re: In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement – Phase 3 Project in Minnesota from the North Dakota Border to the Wisconsin Border  
MPUC Docket No. PL-9/CN-14-916; OAH Docket No. 65-2500-32764**

**In the Matter of the Application of Enbridge Energy, Limited Partnership for a Pipeline Route Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border  
MPUC Docket No. PL-9/PPL-15-137; OAH Docket No. 65-2500-3337**

[illegible]

I, Seth Bichler, hereby state that on July 10, 2017, I filed by electronic eDockets the attached comments on the Draft EIS of the Fond du Lac Band and eServed on July 10, 2017, and sent by US Mail on July 11, 2017, as noted, to all parties on the attached service list.

**See attached service list.**

**SETH BICHLER**

Subscribed and sworn to before me on  
this July 10, 2017.

Notary Public – Minnesota  
My Commission Expires January 31, 2020.





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Von Korff	Gerald	Rinke Noonan	PO Box 1497, St. Cloud, MN-56302	Paper Service	No

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1  
2  
3 MR. LEVI BROWN: Levi Brown,  
4 L-E-V-I, B-R-O-W-N.

5 I wasn't going to speak tonight,  
6 but I think that we have to tell a different  
7 story than what I see walking around here.

8 So my comments tonight are  
9 mostly aimed at the individuals who will be  
10 sharing these as you go through the next  
11 month, different agency folks that will be  
12 representing what you see here.

13 And what I'd like to start off  
14 with is self determination. Tribes, you know,  
15 have been telling states that forever, and  
16 also working along federal agencies and other  
17 partners that maybe are out there, but in this  
18 case I see not really a partnership. I don't  
19 know what I see. And what I'm talking about  
20 is self determination.

21 Leech Lake did a Certificate of  
22 Need. We already did ours. And they said we  
23 didn't need it. I don't know if some of you  
24 have noticed our solar garden is in the back  
25 of the casino here, just finishing up a few

1 panels to go on there. That's our direction.  
2 That's our right to self determine where we'd  
3 like to be and what we see for our future.

4 As state officials, I hope you  
5 recognize that you sit on trust land, treaty  
6 land. This is ours forever. As long as the  
7 grass grows and water runs, it's here. It's  
8 ours. And I don't see that represented here.

9 I see this as a discussion being  
10 made by somebody who has no skin in the game.

11 And what I mean by that is you  
12 look at the route alternatives, with two  
13 routes going through Leech Lake, and the  
14 tribal government was up front, very clear,  
15 "Don't come through. You're not coming  
16 through here."

17 Yet -- told the State, "Don't do  
18 it. Don't put it on there." You still see it  
19 today, R7 -- RA-7, RA-8. How much more clear  
20 do we have to be? "You're not coming  
21 through."

22 And I don't know if that is just  
23 a misrepresentation or not knowing what our  
24 goals are here at Leech Lake, but our goals  
25 are probably in common and in line with most



1 of your citizens in the state of Minnesota.

2 We believe the Land of 10,000  
3 Lakes, the clean water, that's how we're  
4 making our decisions.

5 When I look at the environmental  
6 justice component of this document, I find it  
7 hard to believe that it's not mentioned on any  
8 of these billboards here.

9 You have two alternatives out of  
10 the four right on Leech Lake; not one mention  
11 that Leech Lake Tribal Council passed a  
12 resolution saying, "There will be no  
13 pipelines, new pipelines, running across Leech  
14 Lake."

15 Where's that up there? Why is  
16 it did not being told? Why is there not a  
17 self determination section saying that the  
18 tribe in Leech Lake is saying, "No"? I want  
19 to see that up there.

20 And so when we think of, well,  
21 what does that mean? That's true  
22 government-to-government conversations. A  
23 tribal government is telling the state agency  
24 and the state government in those states that  
25 are analyzing these routes, "It's not an

0812-1

1 option. Respect that part," but yet there are  
2 two still.

3 What kind of relationship is  
4 that? One where you're just not recognizing  
5 that right here, there's no taxes. There's no  
6 state, you know. There's a tribal police  
7 officer back there. Those are ours, paid by  
8 us. What does that say? Who's the majority  
9 within the boundaries?

10 As you move on and you look at  
11 the tribal resource map, I was talking to an  
12 elder that was here looking at that. What  
13 does that dot represent? A dot on one of the  
14 fourth largest lakes in Minnesota, where we  
15 literally have 15 wild rice beds, 10,000 acres  
16 of wild rice are on that watershed. One dot  
17 doesn't represent that.

18 And you look at social economic  
19 impacts that are back here; is it told? I  
20 don't see, really, wild rice on there. Leech  
21 Lake is the wild rice capital.

22 No offense to some of my cousins  
23 from other -- but we are. That's where it is.

24 How can I say that, because the  
25 numbers don't lie. And I have said that to

| 0812-2

1 the State. We average 280,000 pounds a year,  
2 green rice. Times it up by fish, you're  
3 talking millions of dollars. Millions of  
4 dollars that go into tribal members' pockets,  
5 tax free, because guess what? Those  
6 boundaries, they don't get to tax within  
7 there.

8 Self determination, the tribe is  
9 telling you something. Listen, or there will  
10 be conflict, and I don't understand why people  
11 don't see that the tribe is being very  
12 respectful right now.

13 But as state agencies tell that  
14 story -- and I don't see it on these boards --  
15 and I do appreciate some of the staff's  
16 willingness to update these boards as the  
17 process goes on, as we get comment.

18 But to go on to the tribal  
19 resources. Leech Lake has exclusive authority  
20 over wild rice. That's not a resource.  
21 That's a right to determine how that resource  
22 is impacted or how it will be impacted.  
23 That's not even up there. Tell the story for  
24 what it is, not for what you want it to be.

25 And the accidental true

1 releases, I don't see anything about how harsh  
2 it would be if those watersheds, the leach  
3 watershed, the upper Mississippi watershed, if  
4 that 49 miles where that Line 3 crosses, or  
5 the proposed Line 3, Route 7 -- and that  
6 watershed is like a heartbeat across that  
7 line -- if it were to release anywhere in  
8 there, that affects the Mississippi channel of  
9 Leach River. All those rice beds, those  
10 millions of dollars, that should be what's  
11 analyzed in there.

12 And there's just a lot of things  
13 that I don't like in the messaging, and I  
14 wasn't going to take a whole lot of time  
15 tonight, because we do get the big microphone  
16 working for the tribal government, but at the  
17 same time, I think, as agency folks, tonight  
18 if you get together as a team, really take a  
19 hard look at what story you're telling,  
20 because it ain't lining up when you come here.



**Levi, Andrew (COMM)**

---

**From:** LeviB@lldrm.org  
**Sent:** Monday, July 10, 2017 11:41 PM  
**To:** MN\_COMM\_Pipeline Comments  
**Cc:** MacAlister, Jamie (COMM)  
**Subject:** Line 3 Comments  
**Attachments:** Line 3 COmments LLDRM.pdf



**LEECH LAKE BAND OF OJIBWE**  
**DIVISION OF RESOURCE MANAGEMENT**  
**115 6<sup>th</sup> ST. NW Suite E, Cass Lake, MN 56633**

July 10<sup>th</sup>, 2017

Jamie MacAlister, Director  
 Minnesota Department of Commerce  
 85 7<sup>th</sup> Place East Suite 500  
 St Paul, MN 55101

**Re: DRAFT ENVIRONMENTAL IMPACT STATEMENT ENBRIDGE LINE 3  
 REPLACEMENT**

Dear Ms. MacAlister:

The Leech Lake Band of Ojibwe Environmental-Land Department has compiled a list of comments that need to be addressed in the Draft Environmental Impact Statement for Enbridge Line 3 Project. Please see comments below:

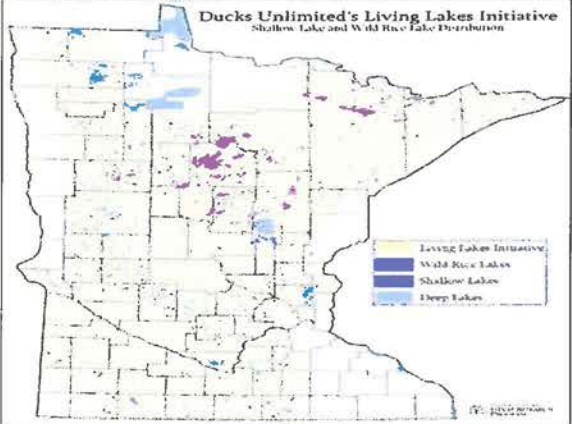
PAGE	CHAPTER	TEXT	COMMENTS
ES-1	Executive Summary	5 <sup>th</sup> Paragraph "as well as ceded territory that tribal members value for wild rice, hunting, and fishing"	The sentence is bias against avoiding the reservations because it reads like the ceded territories are the highest value because of wild rice. When tribal members highest valued wild rice beds are on reservation. That's why we asked for there to be no more new pipelines through the Leech Lake Indian Reservation. So this sentences shouldn't read that value is just ceded territory but should include also on reservation rice beds.
ES-6	Executive Summary	Figure ES-2	The maps coloring needs to be enhanced to better represent the large water resource within the reservations. Figure ES-3 is better representation.
ES-7	Executive Summary	6 <sup>th</sup> Paragraph "through amicable Agreements"	The Leech Lake Band of Ojibwe has publically stated they would not allow any new pipelines and has also memorialized this decision in Leech Lake Statute. Since the title of the section is " <b>How do the tribal and federal approvals affect route decision?</b> " The opening paragraph in the section should lead off with that there is not going to be any amicable ROW given

2369-1

2369-2

2369-3

			or Permits through the Leech Lake Indian Reservation.	2369-3 Cont'd
ES-7	Executive Summary	6 <sup>th</sup> Paragraph "Since then, Enbridge has completed several projects"	This statement should be followed by two historical facts: First that RA-8 was scoped and reviewed in a 2009 Federal Environmental Impact Statement which found that RA-8 was not an acceptable route. The second fact that 4 of Enbridge's projects were built before NEPA was passed in law.	2369-4
ES-7	Executive Summary	6 <sup>th</sup> Paragraph "Enbridge Maintains"	Enbridge is not maintaining they are acknowledging Leech lake Band of Ojibwe right to self-determination by publically saying the reason they are going around is Leech Lake Reservation is because of the clear message they were told in 2010 that Leech Lake Band of Ojibwe would not allow further risks to pristine waters and abundant Wild Rice Beds of Leech Lake which are the cradle of our lifeways. This is the accurate language that should be portrayed in an Executive summary.	2369-5
ES-21	Executive Summary	3 <sup>rd</sup> Paragraph 1 <sup>st</sup> sentence	RA-07 is a heavily congested corridor and the language of comparing a new corridor and the existing mainline corridor is to unclear and needs to clearly read that having 6 or more pipelines in an area is profoundly riskier then having one or two.	2369-6
ES-23	Executive Summary	2 <sup>nd</sup> Paragraph "RA-07 is compatible with existing land use in the area and avoids new long term exposures to spill risk, noise, aesthetic disturbance, and maintenance related disturbance."	<p>This statement is false and the same factors are not being applied fairly. This sentence is being betrayed as a benefit for RA-07 but when analysis RA-06 or APR on page ES-21 more pipelines are construed as higher risk for release. So you can't say having existing land use is an benefit.</p> <p>Also you can't justly say avoids new long term exposures to spill risk when RA-07 when using language from page ES-21 adding new line to RA-07 would multiply the new long term exposures to spill risk.</p> <p>The noise, aesthetic disturbance, and maintenance-related disruption have impacts to the Leech Lake Band of Ojibwe's gathering rights within the Leech Lake Indian Reservation and clearing of lands directly impact the usufructory rights of Leech Lake Band of Ojibwe.</p>	2369-7
ES-23	Executive Summary	3 <sup>rd</sup> Paragraph "Despite these benefits"	Please reference above comment. The factors reviewed about can only be called benefits if there is predisposition towards RA-07.	2369-8

ES-23	Executive Summary	3 <sup>rd</sup> Paragraph	#3 should include difficulties securing USFS Special Use Permit that expires December 31 <sup>st</sup> , 2017. Again LLBO of Ojibwe has ownership of the natural resources within the Leech Lake Indian Reservation and new impacts to this exclusive property rights must be prevented. #4 Potential risk of governmental conflict	2369-9
ES-24	Executive Summary	3 <sup>rd</sup> Paragraph	Consistency when describing analysis. When describing RA-06 words WOULD HAVE are used but when referencing other routes words like Appear and may be or may were used when words like WOULD should be used.	2369-10
ES-24	Executive Summary	7 <sup>th</sup> Paragraph	Should Include a # (3) Direct impact to the political integrity, economic security, and health or welfare	2369-11
ES-26	Executive Summary	Environmental Justice Section	There should be a reference to RA-07 and RA-08 crossing the Leech Lake Indian Reservation where there is state Demographic data that could be used example being.  <a href="http://www.house.leg.state.mn.us/hrd/pubs/indiangb.pdf">http://www.house.leg.state.mn.us/hrd/pubs/indiangb.pdf</a>	2369-12
ES-26	Executive Summary	Figure ES-10	Figure ES-10 Provides a comparison of high quality water resources at risk for each route. The comparison is imbalanced because when you're trying to reflect Wild Rice/Water resource impacts you have to also compare the size water body and size of harvestable wild rice beds. Lake Winniboshish 4 <sup>th</sup> largest lake in Minnesota has more water volume and acres of wild rice beds then all the other individual routes. These Water Resources comparison can not reflect just number of lakes but an actual comparison would reflect acres of water resources crossed. Having a 200 acre lake have the same value as a 56,000 acre lake is not a good comparison.   <p>A version of this map is located on Pg. 6-198 but it is missing several large wild rice bodies.</p>	2369-13



ES-26	Executive Summary	Potential Habitat Loss	The Wild Rice Harvested on the Leech Lake Indian reservation has served as the seed rice for many wild rice restoration projects through ou the region. MNDNR, Red Lake DNR, Fond Du Lac DNR, Upper Sioux Community DNR, Prairie Island DNR, Little Traverse Band DNR (MI), Keenaw Bay Band DNR (MI) and Stockbridge Munsee DNR (MI) have all used the rice that grows with the RA-07 and RA-08 potential impact areas for their own wild rice restoration projects. The potential habitat loss from and accidental release near these seat sources needs to be addressed in a potential habitat loss section in the ES.	2369-14
3-1	Chapter 3	5 <sup>th</sup> Paragraph	Not possibly the U.S.EPA or the tribe would issue the 401 water certification.	
6-189	Chapter 6	1 <sup>st</sup> Paragraph	Should describe the 42 miles of RA-07 and 48miles of RA-08 in which Leech Lake Band of Ojibwe has EXCLUSIVE JURISIDITION AND OWNERSHIP OF WILD RICE WITH THE LEECH LAKE INDIAN RESERVATION. The same type of remark for state ownership was made on page 6-188 4 <sup>th</sup> paragraph.	2369-15
6-189	Chapter 6	Methodology	Leech Lake Division of Resource Management Data set wasn't used to identify wild rice bodies.	2369-16
6-190	Chapter 6	Overview of Wild Rice Water Bodies "Wild Rice waterbodies are shallow bodies of water where rice, a persistent annual grass"	Line is incorrect Wild Rice water bodies come in all ranges of depths on Leech Lake Indian Reservation. Some wild rice beds have a depth of up to 10 feet.	2369-17
6-198	Chapter 6	Figure 6.3.1.2-1. Is incomplete.	Mud Lake, Pike Bay, Sucker Lakes Chain, Portage, Boy River, Leech River and Steamboat lake are all missing from map.	2369-18

6-210	Chapter 6	Wild Rice Water Bodies "One Wild Rice Waterbody is crossed"	False Statement it should say Including 3 water Wild Rice Body crossings Pike Bay, Upper Sucker Lake and White Oak Lake.	2369-19
6-208 Thru 6-220	Chapter 6	Incomplete data missing Wild Rice Water bodies all along RA-07 and RA-08	Same data sets should be done but with complete data. "See attachment A"	2369-20
9-26	Chapter 9	6 <sup>th</sup> Paragraph "Overall, route alternatives RA-07 and RA-08 would have the greatest impact on tribal resources, as they cross two reservations and various ceded lands."	This statement should be in the Tribal section of the Executive summary.	2369-21
11-6	Chapter 11	Figure 11-5. Census Tract 9400.02	This information about Census Tract 9400.02 should be included in the Environmental Justice Section of the Executive summary. 69.2 % is Native American that is huge number.	2369-22

If there is any questions or concerns with our comments please feel free to contact my office at (218) 335-7400.

Sincerely,



Levi Brown, Director  
Environmental-Land Department  
Leech Lake Division of Resource Management

Attachment: Leech Lake Band of Ojibwe Resolution #2016-26



**LEECH LAKE RESERVATION BUSINESS COMMITTEE**

**RESOLUTION NO. 2016 - 26**

**RESOLUTION PETITIONING FOR PROPER INDEPENDENT ENVIRONMENTAL ANALYSIS OF THE RISK OF PIPELINE RUPTURE AND LEAKS, CONSEQUENCES OF SUCH RUPTURE AND LEAKS FOR NEW CONSTRUCTION AND PIPELINE ABANDONMENT, AND PROPER COMPARISON OF PIPELINE ROUTES THAT INCLUDE ROUTES NOT TRAVERSING LANDSCAPES CONTAINING ABUNDANT WILD RICE WATERS**

- WHEREAS,** The Leech Lake Band of Ojibwe ("Band") is a Federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934, and operating under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and
- WHEREAS,** Pursuant to its inherent sovereign authority and its By-Laws, the Band's Reservation Business Committee ("RBC"), made up of duly elected representatives, is the governing body of the Band, having all the legislative powers and responsibilities of the tribal government; and
- WHEREAS,** The RBC is charged with the responsibility of protecting and advocating for the health and welfare of Leech Lake Band members within the exterior boundaries of the Leech Lake Indian Reservation; and
- WHEREAS,** Wild rice is of cultural, religious, and historic significance to the Anishinaabe people; and is the special focus of this resolution; there are, however, other important natural resources involved that we do not address here but that would have greater assurance of protection if the course we insist on be pursued; and
- WHEREAS,** The Band is in support of the removal of Line 3 from the Leech Lake Reservation and reclamation of any lands impacted by Line 3; and
- WHEREAS,** Enbridge Energy Resources, LLC (Enbridge) seeks to locate two crude oil pipelines, known as the Sandpiper and the Line 3 projects, in locations that cross many wild rice landscapes in Minnesota, including the 1855 Treaty ceded territory; and
- WHEREAS,** it is therefore clearly time for the federal, tribal and state governments to address the cumulative environmental impact of these energy corridors, with particular attention to the cumulative impact of oil release risks and consequences to wild rice waters, including the impacts of pipeline abandonment; and

- WHEREAS,** The proposed new pipelines are projected to carry huge amounts of toxic and profoundly damaging oil products, including tar sand oil from northern Alberta, Canada, the same variety of crude oil that damaged more than 35 miles of the Kalamazoo River in Michigan in 2010 when another Enbridge pipeline ruptured; and
- WHEREAS,** There are other possible routes that have been proposed for the Sandpiper project, and that will be proposed for the Line 3 project that do not cross wild rice landscapes and other environmentally sensitive and pristine areas; and
- WHEREAS,** Enbridge has provided testimony that the market for the crude oil products to be carried by the proposed Sandpiper and Line 3 pipelines are mostly in the Chicago regional area, and that the proposed routes as a general case follow old pipeline routes established before environmental laws were enacted, and are therefore merely for the convenience of this private pipeline company; and
- WHEREAS,** The 1855 Treaty Authority has described the impacts to wild rice lands and waters in some detail, and has requested protection of resources in the 1855 Treaty ceded territories in letters to the Secretary of the U.S. Department of Interior and the Assistant Secretary for Indian Affairs ("Petition for Environmental Protection", dated July 15, 2015), and in a letter to Minnesota Governor Mark Dayton ("Notice of 2015 Wild Rice Harvesting Season", dated August 7, 2015); and
- WHEREAS,** To date, and to our continued consternation, no federal or state agency having review and permit authority over these two pipelines has committed to conducting a scientifically sound and thorough assessment of the risks and consequences of leaks and ruptures of the proposed pipelines (including pipeline abandonment) over the more than 50 year project life in a manner that properly compares proposed routes that cross wild rice landscapes with those that don't cross such
- WHEREAS,** To our high consternation, the Minnesota Public Utility Commission (PUC) recently decided (June 5, 2015) to proceed on a course to dismiss all route alternatives that do not cross wild rice landscapes; the result being to narrow the PUC approval process to only routes traversing wild rice landscapes, without even studying the differences in risk and consequences between routes, and in spite of extensive expert testimony to date that such studies are needed. Accordingly, we seek redress through federal law and Treaties against such indifference, fatigue, or administrative legerdemain by the state government; and
- WHEREAS,** Decisions concerning the location of pipelines and abandonment of pipelines, as well as the protection of wild rice and other important natural resources, as described in the 1855 Treaty Authority's "Petition for Environmental Protection", cannot be rationally considered without a thorough understanding of the risk of oil releases and the consequences of such releases; and



**WHEREAS,** Generally accepted technical considerations involved in a responsible environmental analysis must be considered with respect to Enbridge's two proposed projects, which entirely support our demand that the risk of oil releases and the consequences of such releases must be thoroughly understood; and must be understood in the context of route comparisons which include routes that do not cross water-rich landscapes containing wild rice.

**NOW THEREFORE BE IT RESOLVED,** That Leech Lake RBC, at a duly called meeting with a quorum present, does hereby conclude that a risk assessment and analysis of consequences of the two proposed Enbridge projects should be completed through a comprehensive Environmental Impact Statement (EIS); and

**BE IT FURTHER RESOLVED,** That such EIS must be at least of the type and quality of the federal EIS that was completed with respect to the Keystone XL pipeline; and which the Leech Lake Division of Resource Management would be a cooperating agency responsible for providing a Record of Decision; and

**BE IT FURTHER RESOLVED,** That such studies must be developed in consultation with the Anishinaabe of Minnesota, and must specifically develop techniques and methods to determine the potential impacts to the loss and damage to the cultural, religious and historic significance of wild rice to the Anishinaabe people; and

**BE IT FURTHER RESOLVED,** That the technical issues described and listed in Attachment A strongly demonstrate that pipeline failure can occur on new pipelines; can occur from failure of modern pipeline monitoring systems; and will likely occur over the more than 50 year project life of the pipelines, to the extent that decisions on locating these pipelines through wild rice lands are extremely concerning and thus demand the most careful attention from unbiased, objective experts; and

**BE IT FURTHER RESOLVED,** That such studies be accomplished prior to any permits being granted for the Sandpiper and/or the Line 3 Relocation/Enlargement/Abandonment projects; and that such studies be accomplished for alternative routes selected without regard to Enbridge's contracts with shippers or its present system of pipeline configurations; and

**BE IT FURTHER RESOLVED,** That the Tribal Council hereby requests that the Bureau of Indian Affairs, other agencies of the Department of Interior, the Army Corps of Engineers, the Environmental Protection Agency, as well as the Anishinaabe tribes of Minnesota and Wisconsin participate in such risk and consequence analyses prior to granting any federal permits.

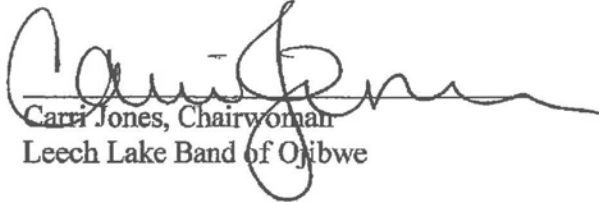
**BE IT FINALLY RESOLVED,** That this Resolution is effective immediately.

#### **CERTIFICATION**

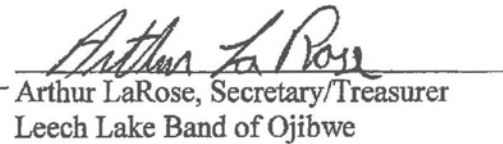
**WE DO HEREBY CERTIFY** that the foregoing Resolution was duly presented and acted on by a vote of   4   for,   0   against and   0   silent at a Special Meeting of the Leech



Lake Reservation Business Committee, a quorum being present, held on October 22, 2015 at Cass Lake, Minnesota. Accordingly, this Resolution is duly adopted by the Reservation Business Committee for the Leech Lake Band of Ojibwe, and the Reservation Business Committee further certifies that this Resolution is in full force and has not been amended or rescinded in any way.



Carri Jones, Chairwoman  
Leech Lake Band of Ojibwe



Arthur LaRose, Secretary/Treasurer  
Leech Lake Band of Ojibwe

**STATE OF MINNESOTA  
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of the Application of  
Enbridge Energy, Limited Partnership for a  
Routing Permit for the Line 3 Replacement  
Project in Minnesota from the North  
Dakota Border to the Wisconsin Border

MPUC Docket Nos. PL-9/CN-14-916  
PL-9/PPL-15-137

OAH Docket Nos. 65-2500-32764 and  
62-2500-3337

**MILLE LACS BAND OF OJIBWE  
COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS**

The Mille Lacs Band of Ojibwe (the “Band”) submits the following comments regarding the Draft Environmental Impact Statement (“DEIS”) for the Line 3 Replacement Project.

**I. Structure and Organization**

The usefulness of an Environmental Impact Statement, for both the public and decision makers, depends largely on its clarity and readability. The EIS needs to present a clear and concise analysis of the impacts of the Applicant’s Preferred Routes (“APR”) and the alternatives. The DEIS falls short of this goal. It is encyclopedic, repetitive, and illogically organized, and as a result, does not present a useful tool for the public and decision makers. First, there is a substantial amount of material within the DEIS which could be moved to the appendixes. For example, much of the data in the 614-page Chapter 5 could be moved to an appendix and the Chapter text could summarize the conclusions with the underlying data made available in an appendix. Second, discussions of existing conditions should be reorganized to allow comparisons between existing conditions across alternatives in both Chapter 5 and Chapter 6. Third, the FEIS would benefit from simple additions such as a table of contents at the beginning of each chapter, introductory paragraphs, and a summary at the end of each section. Finally, additional cross-references throughout the document would assist the reader in locating information relevant to particular topics throughout the document.

**II. Evaluation of Impacts**

A fundamental flaw of the DEIS is that it ignores the fact that some of the alternatives run parallel to existing pipeline corridors, and thus, the impacts to resources in those areas are perhaps incrementally greater but, unlike areas where there are no existing pipeline corridors, are not completely new.

The Executive Summary of the DEIS identifies the percentage of each route alternative that would share or parallel existing rights-of-way. Figure ES-9 shows the percentage of existing utility corridors that each route would follow with a breakdown by the type of corridor (e.g., transmission lines, pipelines, none, etc.) and indicates that that less than 30 percent of the APR parallels existing pipeline corridors; the lowest percentage of any alternative besides RA-06. The analysis in the text of the Executive Summary and throughout the DEIS disregards the

2464-1

distinction between type of corridors and essentially assumes all corridor sharing is equal—that is, the impacts of constructing and operating a petroleum pipeline adjacent to an existing pipeline would be the same as constructing and operating a pipeline adjacent to an electric transmission line. This obviously is not correct and the analysis should be revised to distinguish between the different corridors. Moreover, to provide a complete basis for comparison, the analysis should include the system alternatives, particularly SA-04, in the same or a similar chart.

2464-1  
Cont'd

2464-2

More importantly, beyond the brief discussion in the Executive Summary, the remainder of the DEIS largely fails to account for existing pipelines. Each discussion of “existing conditions” in Chapters 5 and 6 should note whether those conditions include an existing pipeline or utility/transmission corridor, and each discussion of impacts should note whether the impact is new or incremental due to the presence of an existing pipeline corridor (i.e., the risk of a leak is increased due to the addition of another pipeline in the corridor or the risk of a leak is added to an area where it does not presently exist). This is a crucial fact relevant to the comparison of the various alternatives.

Finally, in the interest of transparency, the FEIS should disclose whether the information relied upon in the analysis was obtained from the applicant or from another source.

2464-3

### III. Cultural Resources

As the DEIS acknowledges in Chapter 9, Mille Lacs defines its cultural resources as the “ceremonial areas, cemeteries, archeological sites and artifacts, bodies of water, wild rice lakes and rivers, wildlife, and medicinal plants within the historical Ojibwe native region.” *See* § 9.4.1. Yet, Chapters 5, 6, and 10 explicitly decline to take into account the Native American conception of cultural resources when discussing existing conditions and impacts, and instead direct the reader to Chapter 9. *See* §§ 5.4; 6.4; Table 10.4-7 and Table 10.4-16 (defining cultural resources solely as “Tribal Lands”). This omission relegates the tribal perspective to a secondary status by failing to include it in the quantitative analysis sections that are most likely to persuade the decision makers. It would be most effective to cross reference the detailed analysis in Chapter 9 and also summarize the Native American perspective in Chapters 5, 6, and 10. Also, Appendix P includes significant scientific data provided by the Great Lakes Indian Fish and Wildlife Commission (“GLIFWC”) that was not incorporated into the analysis in the DEIS. The failure to utilize this information furthers the perception that the Native American concerns and expertise are mentioned, but not incorporated, in the analysis of the proposed Line 3 Replacement Project.

2464-4

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Finally, the Executive Summary states that “Department of Commerce staff and management have met with northern Minnesota tribal staff and completed formal government-to-government tribal consultations.” *See* ES-8. The Band hopes that the Department of Commerce agrees that its formal consultation with the Band has begun, but is not yet complete.

### IV. Specific Comments and Questions

#### A. Chapter 1

**Section 1.4:** While it may be beyond the scope of the FEIS to discuss overarching policy reasons for and against continued reliance on fossil fuels, the Department still has an obligation to

evaluate the actual need for the project in order for the Commission to make an informed decision regarding the viability of any of the system alternatives. This evaluation may include a discussion of Enbridge's asserted need for additional capacity and supply and demand considerations. Without this information, the Commission has no basis for determining whether a particular alternative presents a more reasonable and prudent alternative to the APR.

## **B. Chapter 2**

**Section 2.3.3:** Permanent access roads are discussed briefly in Chapters 5 and 6, but the DEIS does not include the location of each road or the number of miles that cross waterbodies. The FEIS should disclose the location and potential impacts of permanent access roads. If this data is included in the appendices, citations should be included.

**Section 2.7.1.1:** In the event that a pipeline is built that crosses land that may contain cultural artifacts, the program for monitoring and inspecting construction must include inspectors from the Native American community who have the ability to identify artifacts and other culturally significant sites that may be encountered during construction, and who have the authority to order corrective mitigation actions. A plan for including tribal members in the program should be addressed in the FEIS.

**Section 2.7.2.2:** With respect to the additional temporary workspaces ("ATWS"), the Band is concerned that wetlands that become ATWS may never be properly restored. The FEIS should discuss the length of time the applicant will be allowed to use ATWS, how many may be turned into permanent access sites, and the specific methods that will be used to de-commission and restore the sites. In addition, the FEIS should discuss whether any chemicals or other hazardous materials will be stored in any ATWS near wetlands and streams, and methods for preventing the release of such chemicals into the water.

**Section 2.7.2.5:** Horizontal Directional Drilling appears to be the safest method for crossing waterbodies, and should be required for each crossing. At the same time, the Band is concerned that such a method may harm cultural artifacts/resources. Does the Applicant have a plan for avoiding such harms?

**Section 2.7.2.6:** The FEIS should provide a more detailed discussion of winter construction methods. The DEIS states that winter construction methods require long, cold sustained weather. How cold does it have to be and for how long? Will a minimum frost depth be required utilize winter construction methods? Can the Applicant be required to use winter construction methods for wetlands to avoid the harm that would result from compaction, grading, access roads, and the creation of ATWS?

**Section 2.8.2.1:** Does the Applicant have a plan to avoid native plants and medicines when mowing the ROW? What herbicides will be used in the ROW and how will such herbicides impact humans, drinking water, plants, wildlife, and fish? What methods will the Applicant use to avoid application of herbicides to culturally significant and medicinal plants?

**Section 2.9:** The first sentence of this section states: "Once the Line 3 Replacement pipeline

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is placed in service, Enbridge would abandon the existing Line 3 pipeline in accordance with federal, state, and tribal statutes, rules, and regulations.” The FEIS should list the tribal statutes being referenced and not merely refer to them in the abstract. Also, when the impacts of abandonment are discussed, the FEIS should distinguish between short- and long-term impacts and should identify impacts that will be the responsibility of the applicant, landowners, or the public to address.

2464-15  
Cont'd

2464-16

### C. Chapter 5

**General Comments:** When evaluating the potential impacts on fisheries, the DIES uses the Fish IBI metric, which led the DEIS to conclude that there are only five lakes rated for Fish IBI along the APR. This metric, however, can be misleading, because many lakes and streams have not been rated by the Minnesota DNR. The FEIS should disclose how many of the lakes and streams crossed have a rating, how many have not been assessed, and for the ones that are not rated, additional data should be collected regarding the status of those waters to correctly evaluate construction and operation impacts on fisheries.

2464-17

In addition, the DEIS emphasizes the impacts to trout streams, while largely ignoring impacts to stream fish such as smallmouth bass, northern pike, and walleye; all of which provide subsistence to the Band. The FEIS should include a discussion of construction and operation impacts to these other fish species, in addition to trout.

2464-18

**Wild Rice:** With respect to the discussion of wild rice, the FEIS should include additional information regarding the specific tribal laws and regulations that apply to the harvesting of wild rice. In addition, in the analysis of existing conditions, the FEIS should state what percentage of productive wild rice in Minnesota could be affected by the construction and operation of the APR. In the impact assessment, the FEIS should explain in more detail the measures that would be taken by the Applicant to minimize impacts on wild rice. In addition, the FEIS needs to explain exactly how many acres of wild rice would be taken out of active production during construction, provide the percentage of active production that represents, and assess whether these stands could be returned the active production after construction. The FEIS should further elaborate on the potential number of acres that would be affected by worst-case scenario situations such as spills or leaks, frac-outs, the introduction of contaminants, invasive aquatic species, and non-native wild rice species. The FEIS should also analyze best- and worst-case scenarios for the estimated length of recovery time for wild rice stands impacted by construction, and estimate how many acres of wild rice may be taken permanently out of production due to construction of the APR in the best- and worst-case scenarios.

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**Section 5.2.1.2.4:** The discussion of frac-outs in this section should include a more thorough analysis of the probability of a frac-out and methods of avoidance and remediation. Industry data on frac-outs, and particularly Enbridge’s history regarding frac-outs should be included in the FEIS.

2464-25

**Section 5.2.4.3.1:** This section should include a more detailed discussion of stream bank stabilization methods, and the plans for long-term maintenance of erosion control structures.

2464-26



In addition, the FEIS should provide a more detailed discussion of the applicant's plan to avoid the spread of invasive species, and the plan for stopping or remediating an evasion.

2464-27

#### D. Chapter 6

**Page 6-180:** In the mitigation paragraph it says that if the pipeline negatively impacts a person's well water that the Applicant would find an alternative source of water. It then says that after a "reasonable" time period the Applicant *could* compensate the land owner or find another drinking water supply. Details regarding the thresholds for a "negative impact," the "reasonable" time for a landowner to wait for compensation and/or replacement, and assurances that the Applicant will provide the replacement water supplies should be provided.

2464-28

#### E. Chapter 9

**General Comments:** This Chapter effectively conveys the connections between culture, the environment, and the health of tribal populations, and we appreciate the effort taken to convey the importance of these resources from the tribal perspective. At the same time, the Band believes that the Chapter is conclusory in its statements regarding which routes have the fewest adverse impacts to natural and cultural resources. While it is important to convey a qualitative perspective on the impacts of a pipeline on natural and cultural resources, the Band remains interested in how the Department quantifies such impacts across routes, and short and long-term. The Band believes the Chapter would benefit from additional cross-references to the quantitative analyses in other chapters and should summarize the conclusions from those chapters. Similarly, the quantitative chapters should cross-reference Chapter 9 when discussing wild rice, climate change, fisheries, forestry, and other resources, as well as the impacts of spills.

2464-29

In addition, this Chapter, like most of the DEIS, largely ignores the fact that the APR would run in large part along a completely new pipeline route, whereas other alternatives, such as RA-03 follow existing pipelines for much of the route. Introducing pipeline-related impacts and risks to a new area, let alone an area that contains some of the most pristine waters in the state, would be perceived by tribal members as yet another taking of their land, rights, and heritage, contributing to further mistrust, feelings of powerlessness, and other social and emotional impacts. While it is true that any pipeline threatens the Band's cultural resources, because of its location, the APR poses a greater risk than others.

2464-30

**Section 9.1:** Several other indigenous groups, such as the Ho-Chunk, Iowa, Assiniboine, have ancestral connection to the area now designated as Minnesota; it is not only the Anishinaabe and Dakota. This should be made clear throughout the DEIS.

2464-31

**Section 9.2:** The first sentence of the last paragraph in this section should state that the land now known as Minnesota is the ancestral homeland of the Dakota; it is not merely where they "fished, hunted, and gathered."

2464-32

Also, the Commission should ensure that the FEIS lists the full and correct names of each tribe.

2464-33

**Section 9.2.1:** The concept of self-governance centers on both natural and cultural resource management, and tribes often have an ancestral and/or spiritual connection to cultural resources within their historical homelands. This idea is not clearly and fully articulated within the DEIS.

2464-34

**Section 9.2.2:** Tribes do not only manage fishing/hunting/gathering on their current reservation, but within their treaty area; that is, resource management does not end at the reservation boundaries.

2464-35

**Section 9.2.3.3:** This paragraph should reference the “Minnesota Chippewa Tribe” (“MCT”) rather than the “Minnesota Chippewa.”

2464-36

**Section 9.3.4:** The FEIS should include the names of the tribal elders and historians that were interviewed by the Department of Commerce.

2464-37

**Section 9.4.1:** This section should make clear that the destruction of ancestral cultural sites is an irreplaceable loss to each tribal nation’s heritage.

2464-38

**Section 9.4.2:** It is unclear how the concept of Cultural Corridors was developed and defined, and the MCT was never asked to designate or identify any land as a cultural corridor. While the MCT supports MIAC’s recommendation of a complete survey of cultural corridors, such a survey should occur before any route is approved, and not merely before construction.

2464-39

This section should also clarify that water is the absolute basis of each nation’s vitality, and a resource that must be carefully managed for future generations.

2464-40

**Section 9.4.4.1.1:** The FEIS should include a thorough discussion of the resolutions passed asserting the importance of natural and cultural resources, and copies of those resolutions should be included in the Appendixes. This section should discuss how those resolutions were factored into the FEIS. This paragraph is also incorrect in that it refers to the National Congress of American Indians as one of the Chippewa Tribes.

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2464-43

With respect to impacts on fisheries, first, the FEIS should include a more thorough discussion of the impacts of climate change on fish assemblages, abundances, and distributions, and how those impacts may be exacerbated by construction of the pipeline. Second, the Band would like to see much more extensive fisheries baseline data collection on Big Sandy Lake, Lake Minnewawa, Rice Lake, and other surrounding lakes that are connected to the Sandy River (including compiling a microchemical profile on otoliths extracted from fish species). Then, in the event of an oil spill, the impacts on fish can be evaluated and the Band can adjust its management of fisheries. This will also enable future studies to track the impacts on fisheries in the event of a spill. For further explanation of methodology, see the procedures outlined in Nelson et al. 2015. The Band also suggests establishing baseline abundances, growth rates, and relative condition of walleye and other fish species before construction of the APR.

2464-44

Finally, please note that “walleye” in Ojibwe is spelled “Ogaa,” not “Ooga.”

2464-45

**Section 9.4.8:** The last sentence of the first paragraph states that “Leech Lake has the most wild rice in North America.” It is unclear whether this is referring to the lake itself, the current reservation, or the original reservation area.

2464-46

In addition, the FEIS should provide a clear analysis of what percentage of productive wild rice is at risk by the APR and each alternative, and how many productive acres could be lost in the event of a spill.

2464-47

**Section 9.5.1:** The losses that would be caused by construction are far greater than simply the fragmentation of forests; it is the loss of all cultural and natural resources in the construction area. In addition, this section, and numerous others throughout the DEIS, makes the conclusory assertion that impacts from construction will be “short term and negligible to minor.” These conclusions are unsubstantiated.

2464-48

**Section 9.5.3:** This section contains a conclusory assertion that RA-03 and the APR have the fewest impacts, without distinguishing between the two. While the Band appreciates the more qualitative analysis in this Chapter, there is still an important discussion to be had about the specific short- and long-term impacts of each route and the risks posed by each. In comparison to the APR, RA-03 poses fewer risks to vital cultural and natural resources by largely avoiding the pristine waters in the Lake District.

2464-49

## F. Chapter 10

**General Comments:** The Band has numerous concerns about the DEIS’ reliance on the Stantec et al. 2017 study and the OILMAP model in terms of accurately analyzing and predicting oil release impacts and mitigation. First, Stantec et al. used an extremely limited number of samples—only 7. Particularly in the region where the APR would be located, such a low number represents a mere fraction of the waterbodies that would be at risk in the event of a spill, and it is impossible to accurately predict the full magnitude of impacts based on a mere seven streams. A second shortcoming of the Stantec et al. study is that it does not model worst-case scenarios. The FEIS should compare the conservative estimate with a worst-case scenario. Finally, and perhaps most importantly, Stantec et al. does not provide statistical data, estimates of variance, or confidence intervals, nor does it discuss how many simulations were run or provide p-values. The lack of this type of data and analysis undermines the reliability of the study and would certainly not be acceptable within the scientific community.

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With respect to the OILMAP model, the Band does not think it accurately predicts how far oil will travel. First, OILMAP assumes that the released oil will float on the water, and does not sufficiently account for other oil weathering processes such as dissolution and dispersion. Second, OILMAP assumes that shoreline saturation will occur before oil moves further downstream. This is an unrealistic assumption, and results in the model underestimating the oil dispersal distance. Third, OILMAP assumes 100% snow and ice cover when modeling winter spill scenarios. Because of climate change, this assumption is flawed, and the applicant should be required to model winter spills based on a 0-50% snow cover. Fourth, OILMAP assumes, at worst, a 24-hour response time. This assumption is concerning because the APR would be located primarily in rural areas that may be difficult to access, particularly in the winter. The FEIS should include more information regarding the basis for using 24 hours as a conservative,

2464-51

worst-case scenario, as well as data on the average amount of time Enbridge historically responds to spills, and any other assumptions or analysis underlying the 24-hour period in terms of accessibility to any particular site along the APR. Finally, OILMAP makes broad generalizations about habitat type. For example, when modeling oil releases into the Mississippi River by Little Falls, Stantec et al. assumes the river bottom is silt/mud. How would different habitat types affect spill release distances?

2464-51  
Cont'd

Ultimately, the Band believes that the FEIS should consider using independent modeling of oil spills, such as SIMAP, which is a stronger model, and could be used to analyze the impacts of the spill on a broader range of waterbodies.

2464-52

**Section 10.3.3.2:** It is unacceptable that Enbridge be able to hide the “predicted volume out” data as “nonpublic.” This data is essential for purposes of cross-checking the estimated distance that oil would travel. This data should be made public, or, at the very least, assurances must be made that the data will be available to decision makers.

2464-53

**Section 10.4:** The 10-mile ROI seems to be an arbitrary cut-off. If constructed, the APR would traverse some of the most pristine and interconnected waters in Minnesota. The FEIS *must* provide at least an estimate of the maximum distance that oil could travel in these waters in the event of a catastrophic spill. In addition, the 10-mile ROI appears to only apply to rivers and streams. This analysis should be expanded to include a broader range of waterbodies. For example, the APR crosses a stream that connects to a downstream lake called Two-Inlets Lake, yet, potential impacts on that lake are not evaluated.

2464-54

The 2,500 area of interest cut-off also seems arbitrary, particularly when applied to the effects of a spill that may impact a body of water. As with the downstream analysis, the FEIS must at a minimum show the maximum distance that oil could travel in water in the event of a catastrophic spill. Again, the Band urges the Department to use an independent party to review the methodologies applied in this Chapter.

2464-55

**Section 10.4.2.1.1:** While this section discusses the health risks that may generally result from ingesting aquatic food sources that have been contaminated by an oil spill, a more thorough discussion is needed of these risks, particularly to tribal members who rely on fish, wild rice, and other types of aquatic resources for sustenance.

2464-56

**Section 10.4.2.1.2:** It is inconceivable that the APR has only 48 acres of cultural resources within 2,500 feet of the centerline, and 0 acres of cultural resources within the 10 mile downstream ROI. *See* Table 10.4-7; Table 10.4-16. The entire purpose of the tribal consultation efforts was to identify cultural resources threatened by the pipeline and to evaluate those impacts in the DEIS. The fact that data on cultural sites and historic resources was not available for *all* CN Alternatives is irrelevant. The data that exists, particularly with regard to the APR, cannot simply be ignored. The FEIS must be amended to correct this significant deficiency.

2464-57

**Section 10.5.1.1.1:** The FEIS should provide additional information regarding the assertion that third-party damage is the leading cause of pipeline releases, why this is the case, and detailed plans from Enbridge for addressing this issue, particularly within and among tribal communities.

2464-58

2464-59

**Section 10.5.2:** This Section appears to suggest that local and tribal governments may be required to serve as first responders to a spill during Project operations. *See* 10-100, 10-102. The DEIS largely fails to account for the fact that the APR passes through mostly rural land, where local governments do not have the resources, financial or otherwise, to deal with a spill, and states, without any explanation, that if an “oil spill incident becomes too large or complex for local and onsite capabilities” then state or regional entities could be called in. Neither the Band nor other local or tribal communities should be required to pay for oil spill clean-ups for a pipeline they do not want. This Section needs to be considerably expanded to describe in detail the particular responsibilities that a local or tribal government would have in the event of a spill, and the cost that would have to be borne by these entities, and what exactly would trigger a state or regional response. This section contains no analysis or estimate of the potential costs of clean-up of spills of various sizes. Moreover, this section does not reassure the Band that Enbridge would bear the immediate and primary responsibility for clean-up and remediation, as well as for any and all costs borne by the Band and reparations for damage to natural and cultural resources.

## G. Chapter 11

**General Comments:** The use of census tract level data has the potential to mask small populations within a larger tract. For example, the analysis does not appear to include the Band’s East Lake Community near McGregor, MN even though it undoubtedly qualifies as an environmental justice community. Where the Department has reason to believe that the screening has failed to capture a relevant population, it should obtain the information necessary to support the inclusion of such populations. The Band will provide whatever information the Department needs in order to include the East Lake Community in its environmental justice analysis.

2464-60

## H. Chapter 12

**General Comments:** Section 12.4.6 contains an inadequate discussion of the impacts that would be caused by the addition of a pipeline in the corridor proposed for the APR. Less than a year ago, Enbridge proposed building two pipelines in this corridor, and it is highly likely that such a proposal would be re-introduced if a new pipeline is built. This section needs to contain a much more thorough analysis of the cumulative impacts of multiple pipelines or risk grossly underestimating the environmental impacts of this project. Given the history of the Sandpiper Project and continued aging of other pipelines in the mainline corridor, the FEIS must consider the cumulative impact of adding one or more additional pipelines along the APR including how the proximity of adjacent pipelines will be addressed in a shared corridor to avoid the issues which the applicant asserts preclude removal of the existing Line 3.

2464-61



Respectfully submitted,

Dated: July 10, 2017

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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