

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RED LAKE BAND OF CHIPPEWA INDIANS
15484 Migizi Dr.
Red Lake, MN 56671

WHITE EARTH BAND OF OJIBWE
35500 Eagle View Rd.
Ogema, MN 56569

HONOR THE EARTH
607 Main Ave.
Callaway, MN 56521

SIERRA CLUB
2101 Webster St.
Ste. 1300
Oakland, CA 94612

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This complaint challenges authorizations by the United States Army Corps of Engineers (“Corps”) in connection with a so-called pipeline “replacement” project in Minnesota (“Project”) proposed by Enbridge Energy, Limited Partnership (“Enbridge”).

2. Enbridge currently operates a 34-inch diameter pipeline (“Existing Line 3”) with an average annual capacity of 430,000 barrels per day (“bpd”) and a design capacity of approximately 478,000 bpd or 332 barrels per minute. Enbridge currently uses Existing Line 3 to carry mostly lighter grades of oil, not the heavier “diluted bitumen” or “dilbit” extracted in the Alberta tar sands region. Existing Line 3 crosses from Canada into the U.S. border near Neche, North Dakota, and then travels across the northeastern corner of North Dakota and northwestern

Minnesota to Enbridge's Clearbrook Terminal in northcentral Minnesota, and from there across northern Minnesota, including the Leech Lake and Fond du Lac Indian Reservations, to Enbridge's Superior Terminal in Superior, Wisconsin. The Superior Terminal is located on the banks of the Nemadji River approximately 3.5 miles upriver from Lake Superior.

3. Enbridge would construct a new pipeline to "replace" Existing Line 3. The new pipeline is also called "Line 3," but it would transport heavy sour "dilbit" from the tar sands region in Alberta, Canada to the Clearbrook and Superior Terminals. The Project consists of the portion of Line 3 that would travel across approximately 338 miles in Minnesota and about three-quarters of a mile in North Dakota. The Project would cross 227 waterbodies and more than 800 protected wetlands. The Project also would cross ceded lands in Minnesota where Plaintiffs Red Lake Band of Chippewa Indians and White Earth Band of Ojibwe (collectively, "Tribes") exercise claimed hunting, fishing, and gathering rights.

4. On November 23, 2020, the Corps granted Enbridge's request for a Clean Water Act ("CWA") Section 404 permit to discharge dredged and fill material into waters of the United States. 33 U.S.C. § 1344. The Corps also authorized the alteration of Rivers and Harbors Act navigable waters, pursuant to Section 10 of the Rivers and Harbors Act of 1899 ("RHA"), 33 U.S.C. § 403. At the same time, the Corps issued a letter authorizing work altering the Lost River, Minnesota Flood Control Project under Section 14 of the RHA, 33 U.S.C. § 408, which is commonly referred to as a "Section 408 Permit." These authorizations are referred to collectively in this complaint as the "Permit" and are required for Enbridge to construct the proposed pipeline.

5. Although promoted as a replacement, significant portions of the Project would travel along a new route. Moreover, the initial average annual capacity of the new Line 3, of

which the Project is an integral part, would almost double to approximately 760,000 bpd, as would its initial design capacity, which would increase to 844,000 bpd, or 586 barrels per minute. Line 3, including the Project, would be constructed with pipe and other fittings that would allow Line 3 ultimately to have an average annual capacity of 915,000 bpd and a design capacity of 1,016,000 bpd, or 705 barrels per minute, by the inclusion of additional pumping horsepower.

6. Spills of tar sands oil can devastate entire ecosystems and are deleterious to human health. The increased extraction and use of Canadian tar sands oil that the Project will facilitate also will cause significant damage, estimated in the hundreds of billions of dollars, due to its contribution to climate change.

7. Plaintiffs Red Lake Band of Chippewa Indians, White Earth Band of Ojibwe, Honor the Earth, and Sierra Club bring this case because the Corps' issuance of the Permit authorizing the pipeline violates multiple federal laws and treaties, harming Plaintiffs and their members.

8. Although the Corps purports to find that the Project will have no significant impact on the environment, both construction and operation of the Project would have significant impacts.

9. Construction would require clearcutting vegetation from a 50 foot-wide permanent right-of-way and a 95- to 125-foot temporary construction right-of-way for the entire route of the Project; excavation of a minimum 7 foot-deep trench; stockpiling of removed soils; transportation of approximately 60 foot-long, 36-inch diameter pipe segments to the trench; welding the pipe segments into a continuous pipeline; re-filling of the trench; and construction of ancillary facilities, including pump stations, valves, electrical substations, access roads,

horizontal directional drilled waterbody crossings, cathodic protection equipment, and communications facilities. These activities also would utilize a substantial amount of heavy equipment that will produce noise and air emissions, damage roads, and compact soils. These construction-related activities alone make the Corps' finding of no significant impact indefensible.

10. In addition, the Corps ignored significant operational impacts the Permit would authorize, including impacts to water quality and drinking water; impacts to hunting, fishing, and gathering; oil spill risks; indirect air quality impacts resulting from the significant amounts of electrical power needed for the additional pumps; environmental justice concerns; and climate impacts.

11. By ignoring these impacts, the Corps improperly decided not to prepare an Environmental Impact Statement.

12. The construction and operation of the Project, as authorized by the Corps, will harm the environment, including resources supporting the Tribes' hunting, fishing, and gathering activities on and off their Reservations. The environmental harm brought about by the project will also harm the interests of members of Honor the Earth, the Sierra Club, and all Minnesotans who hunt, fish, and recreate in Northern Minnesota. The Project will, among other things, damage or destroy a significant amount of wetlands and uplands within federal jurisdiction, damage or destroy important waters and culturally significant resources, likely result in spills of harmful tar sands oil, and increase greenhouse gas emissions. The Corps' failure to take a hard look at these impacts under the National Environmental Policy Act ("NEPA") renders the approvals unlawful.

13. Moreover, the Corps failed to fully evaluate whether construction of the pipeline meets the requirements of a CWA § 404 permit, including whether the pipeline is the least environmentally damaging practicable alternative.

14. The Corps failed to comply with its own regulations for CWA § 404 permits and RHA Section 14 authorizations when it improperly concluded that the pipeline is in the public interest.

15. Plaintiffs seek a declaration that the Corps' issuance of the Permit authorizing construction and operation of the Project was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law in violation of the Administrative Procedure Act ("APA"), NEPA, the CWA, and the Corps' own permit regulations. Plaintiffs ask that the Permit authorizing the Project be vacated and that construction of the Project be enjoined.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), and 1362 (civil actions brought by federally recognized tribes when the matter in controversy arises under the Constitution, laws, or treaties of the United States). The relief sought is authorized by 28 U.S.C. §§ 2201(a) and 2202, and 5 U.S.C. § 706.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because it is the district in which the defendant resides.

PARTIES

18. The Red Lake Band of Chippewa Indians is a federally recognized Indian tribe with a government-to-government relationship with the United States. The Band originates from

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