

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**FRIENDS OF THE HEADWATERS,
17456 Half Moon Rd
Park Rapids, MN 56470**

Plaintiff,

v.

**UNITED STATES ARMY CORPS OF
ENGINEERS; COL. KARL JANSEN,
District Engineer, St. Paul District,**

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff FRIENDS OF THE HEADWATERS for its Complaint alleges and states as follows:

INTRODUCTION

1. This is a civil action alleging violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4331 *et seq.*, and the Clean Water Act (“CWA”), 33 U.S.C. § 1344.
2. Friends of the Headwaters seeks declaratory and injunctive relief under the judicial review provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706.
3. This complaint challenges permits issued by Defendants United States Army Corps of Engineers (“Corps”) and its St. Paul District Engineer Col. Karl Jansen in late 2020 allowing Enbridge Energy, Limited Partnership (“Enbridge”) to construct a new crude oil pipeline running across northern Minnesota (“the Line 3 oil pipeline”) for 338 miles to Superior, Wisconsin.
4. On November 23rd, 2020, the Corps issued its “Decision Document.” The document includes the environmental assessment (EA) undertaken by the Corps evaluating the impacts of

those portions of the Line 3 oil pipeline project the Corps chose to consider, its finding of no significant impact (FONSI), that there are no significant environmental impacts from those portions of the project, its public interest review, and its reasons for issuing the permits Enbridge requested. This Decision Document is attached as Exhibit A to this Complaint. Exhibit A, Decision Document, Nov. 23, 2020.

5. The decision document was not made available until December 9, 2020 when the Corps responded to a Freedom of Information Act request.

6. The construction of the Line 3 oil pipeline will have significant adverse environmental impacts on rivers, lakes, streams, and wetlands in the Headwaters of the Mississippi River region and along its route.

7. The construction of the Line 3 oil pipeline will have significant adverse environmental impacts on Lake Superior and its watershed.

8. The construction of the Line 3 oil pipeline will require trenching through or tunneling under 227 waterbodies and over 800 protected wetlands along its route in Minnesota.

9. The Defendant Corps nonetheless issued permits for the Line 3 oil pipeline without conducting an Environmental Impact Statement (“EIS”) as required by NEPA.

10. The Defendant Corps found in its decisional documents that the portions of the Line 3 oil pipeline project the Corps chose to consider would have no significant environmental impacts.

11. The Defendant Corps’ permits failed to comply with the CWA “404(b)(1) Guidelines,” 40 C.F.R. pt. 230.

12. The Corps improperly deferred to decisions made by state utility regulators instead of doing its own environmental analysis under the NEPA and the CWA.

13. Enbridge was responsible for the massive spill of more than 1 million gallons of Canadian “tar sands” oil from its “Line 6B” oil pipeline into the Kalamazoo River near Marshall, Michigan on July 25, 2010, which created extensive ecological, wildlife, environmental and property damage, and kept the River closed for two years.

14. Enbridge’s Line 6B oil spill required a cleanup effort over many years that cost billions of dollars.

15. In 2016, Enbridge was fined \$61 million as part of an overall \$177 million settlement with the U.S. Environmental Protection Agency and U.S. Department of Justice for Enbridge’s massive 2010 oil spill into the Kalamazoo River.

16. The Corps did not consider less environmentally damaging practicable alternatives in approving permits for the Line 3 oil pipeline across Minnesota.

17. The Corps did not consider the risks of a catastrophic Line 3 oil spill like Enbridge’s massive 2010 Line 6B oil spill into the Kalamazoo River in Michigan.

18. The Corps did not consider the potential lifecycle climate impacts from putting the Line 3 oil pipeline into service.

19. These Corps permits fail to comply with the requirements of both NEPA and the CWA.

20. The Corps’ decision to issue the permits was thus arbitrary and capricious, and contrary to law.

21. Therefore, the Court must vacate the Corps permits, and must enjoin Enbridge from proceeding further with construction of its Line 3 oil pipeline.

JURISDICTION AND VENUE

22. This Court has federal question jurisdiction under 28 U.S.C. § 1331, as this action presents a controversy under federal laws including NEPA and the CWA, and their implementing regulations, and the APA.

23. The court also has jurisdiction under 28 U.S.C. § 1346 because the United States is the Defendant.

24. The relief requested is authorized by 28 U.S.C. §§ 2201(a) (declaratory) and 2202 (injunctive), and by the APA, 5 U.S.C. § 706.

25. Venue is appropriate in this district under 28 U.S.C. § 1391(e) because the Defendant Corps' headquarters is located in this district.

PARTIES

26. Plaintiff Friends of the Headwaters is a not-for-profit membership-based organization under section 501(c)(3) of the Internal Revenue Code dedicated to informing and educating citizens about the environmental risks of Enbridge's proposed oil pipelines, and the threats posed by the Line 3 oil pipeline in the Headwaters of the Mississippi River region.

27. The Line 3 oil pipeline creates risks and threats of environmental harm to lakes, streams, wetlands, wild rice (*zizania palustris*; *z. aquatica*) stands, drinking water supplies, and wildlife in northern Minnesota's "Land of 10,000 Lakes."

28. Friends of the Headwaters' organizational mission has been impaired by Defendant Corps' failure to conduct and complete an EIS under NEPA and a permitting review that fully and fairly assesses potential environmental impacts, evaluates less environmentally damaging alternatives, considers potential mitigation measures, and addresses whether the project is in the public interest.

29. Friends of the Headwaters' members live, work, and enjoy recreational activities near the Line 3 oil pipeline's proposed route, and they are and will be suffering loss of property values and loss of recreational opportunities from both construction and operation of the Line 3 oil pipeline if it is built.

30. Construction and operation of the Line 3 oil pipeline would permanently alter the hydrology of numerous wetlands and change the character of the natural environment in the Headwaters of the Mississippi River region.

31. Many Friends of the Headwaters members are avid hikers, hunters, anglers, skiers, bird watchers, and naturalists who use the outdoors for recreational activities and enjoy the aesthetics of the environment of the Headwaters of the Mississippi River region through which the Line 3 oil pipeline is planned to be sited.

32. The trenching, tunneling, and clear-cutting required to construct the Line 3 oil pipeline, and the presence of the oil pipeline, once built, will irreparably alter the natural environment of rivers, streams, wetlands, and wildlife habitats that Friends of the Headwaters members use and enjoy for recreational activities.

33. These areas will also be at greater risk of contamination from an oil spill or leak if the Line 3 oil pipeline is built.

34. Many Friends of the Headwaters members draw their drinking water supplies from aquifers, lakes, and rivers that the Line 3 oil pipeline will cross, trench through, or bore under. These drinking water resources will be at greater risk of contamination, both from construction and from potential oil spills and leaks if the Line 3 oil pipeline is built.

35. Many Friends of the Headwaters members have spent their lives in Northern Minnesota, raised their families there, and intend to keep living there.

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