

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
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Chair
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In the Matter of the Application of
North Dakota Pipeline Company
LLC, for a Certificate of Need for the
Sandpiper Pipeline Project In
Minnesota

OAH Dkt No. 8-2500-31260
PUC Dkt No. PL-6668/CN-13-473

**HONOR THE EARTH'S
MOTIONS FOR STAY OF SANDPIPER CERTIFICATE OF NEED
PROCEEDINGS AND TO CONSOLIDATE SANDPIPER AND LINE 3
CERTIFICATE OF NEED ON PRESENT LINE 3 PUC SCHEDULE**

To: The Public Utilities Commission (PUC)

Comes now *Honor the Earth* to motion the PUC to STAY any further
consideration of the Certificate of Need (CN) for the Sandpiper and

CONSOLIDATE the Sandpiper and Line 3 CN (14-916) PUC proceedings so that full, complete and proper, environmental examination and analysis can be given to the cumulative effects and impacts of at least Sandpiper and Line 3, so that meaningful decision-making may occur, by all stakeholders with federally and state recognized property interests and treaty rights.

In truth, Minnesota's environmental protection laws¹ are being circumvented by a four-way pipeline attack on northern Minnesota the lake regions with similar and redundant characteristics, which are examined and considered by the PUC as individual projects.² In reality all four are occurring within a three (3) year time period, and because of separate DOC³ treatment and application processes, which cause intentionally ignore the real climate change and environmental impact analysis of the real risks and dangers, *in there obvious risk and cost totality*.

Considering the “real world” environmental totalities, and recognizing that Enbridge as a *de facto* foreign corporation⁴ has 4 projects which directly risk and impact ultra-sensitive, clean water aquifers, wetlands, lakes and rivers of northern

¹ Minn. Stat. 116D *et seq* See Purpose of Minnesota Environmental Policy

² See Enbridge Clipper line 2010 (08-253), Enbridge Clipper expansion (Line 67) (13-153), Enbridge Sandpiper (Bakken) line, Enbridge Line 3 (tar sands) piggy back on Sandpiper route (all passing through Minnesota to Superior), and Minnesota Pipe Line Co Line 4 Expansion (Bakken) (14-320) for Koch refinery in Richfield, MN.

³ Department of Commerce does not regulate oil or pipelines, instead only providing a forum for determining Need expressed by application and route permits.

⁴ Enbridge n/k/a North Dakota Pipeline Company (NDPC) for this application and project.

Minnesota, it is readily apparent Enbridge is relying on the poor application of competing state laws to divide and minimize the risks, so that one pipeline is always the only amount of abstract risk considered by the DOC, ALJ, and PUC --- no matter how many pipelines are in the corridor, will be in the corridor, with various volumes and pressures, that all exponentially, multiply Minnesota's environmental pass through risks many times more, so that corporations, at the ends of the pipeline outside of Minnesota profit.

Divide and conquer?

Cumulative environmental and climatic change impacts analysis are completely missing from what is obviously one of the greatest saturations of oil pipeline risks. Together Sandpiper and Line 3 are carrying Tar sands and Bakken crude, which are some of the dirtiest crude oils on the planet, which both involve ultra-dangerous activities that require some of the most extreme extraction methods, which then compound degradation of adjacent environments and ecosystems, in and out of Minnesota, by knowingly-increasing, irreversible and negative, climate change impacts. Minnesota is downwind from both projects field operations, and much of the United States drinking water is downstream of the Headwaters of the Mississippi.

Here in the northland of Minnesota, clean water and clean air are not

considered alternatives but the actual NEED, for life, eco-tourism and often the cure for what ails folks from excessive civilization. Out of sight is out of mind until your senses are shocked (by unconscionable and unstoppable crude oil destruction) and can never forget the images now forever iconic: Exxon Valdez, Kalamazoo River, Gulf of Mexico BP spill, Clearbrook and Cohasset, MN, etc. This means without a free ride through treaty territories and Minnesota's lakes and rivers, wild rice and aquifers, Enbridge might lose profits and business to competitors⁵ or discover the Bakken crude and tars sands are not worth all the extreme extraction costs, much less transportation costs.

This is the time to pause and think ahead about whether and if, a smart corridor for ultra-dangerous, fracking and tar sands open pit mining activities to avoid three (3) of the most significant watersheds of the North American continent where millions of Americans get their drinking water every day, will be lost forever?

Honor the Earth and anyone without e-docket blinders for separate pipeline projects can see

Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest

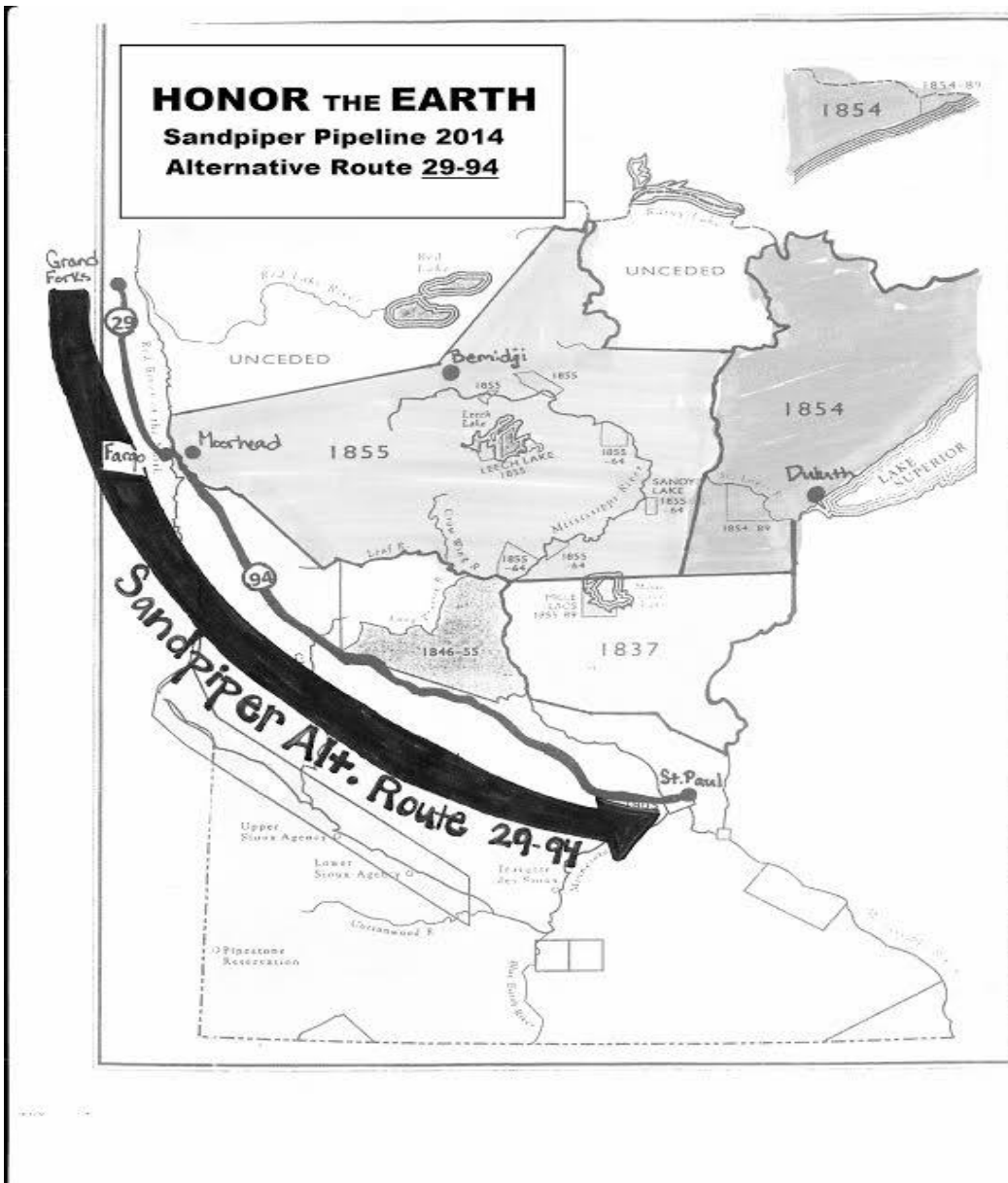
⁵ Minnesota Pipe Line Company, Line 4, to Richfield, MN.

concentration of lakes, streams, and open-water wetlands in the state.

Any route proposed out of Clearbrook, either south or east will cross dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

(See MPCA Comments—Supplemental Comments Replacing MPCA Letter dated May 30, 2014, at p. 15, filed with PUC as Doc 20146-100780-01. Emphasis added).

Translated into layman terms, the I-29 I-94 (System Alternative 8) makes the most common sense for Minnesota and the nation, BUT not the most dollars and cents for big oil, Enbridge, Marathon and our environment. The south of I-94 alternative avoids private lands, federal and state conservation areas, is easily accessible by pipeline workers and emergency equipment, in shorter periods of time. The longer route also provides more employment, although most of the pipeline workers for the Sandpiper will likely be the same people for Line 3, so while more “jobs” might be involved over time, not twice as many people working.



MORE PUBLIC MEETINGS AND HEARINGS

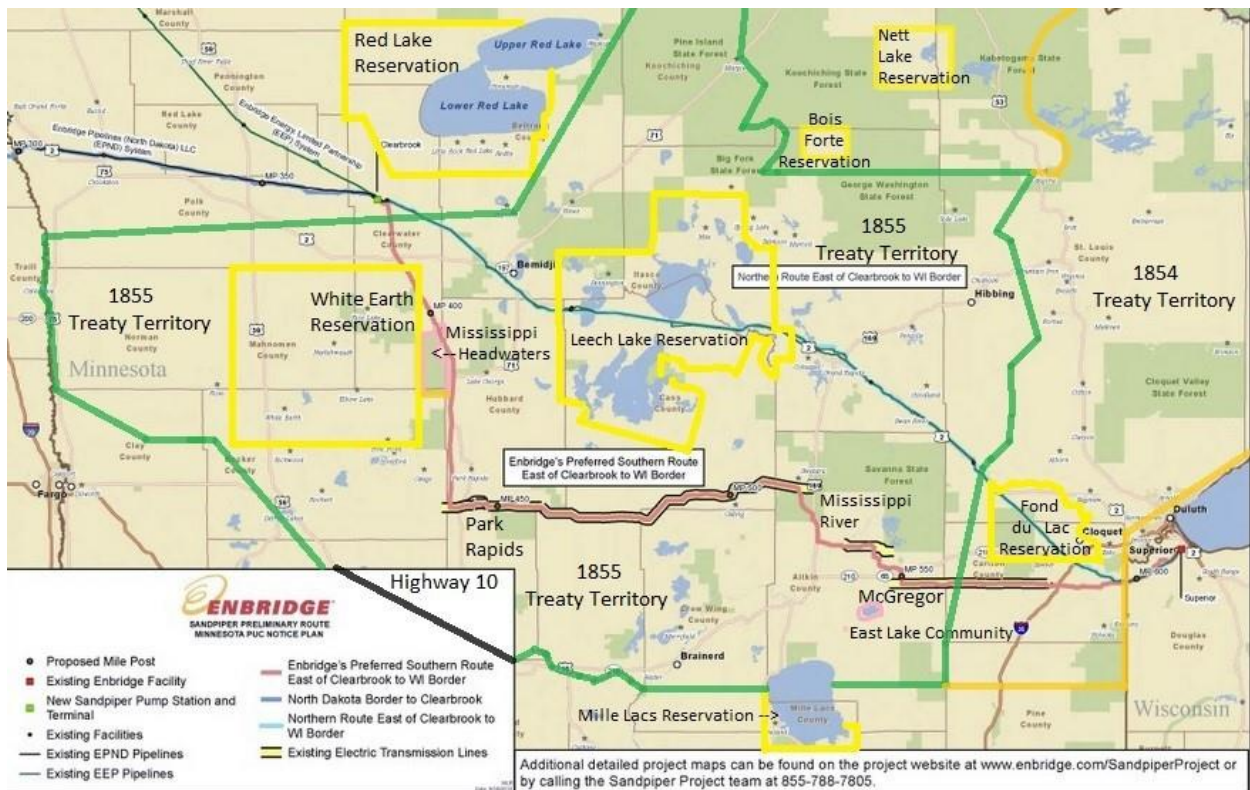
Presently, both the White Earth and Mille Lacs reservation tribal governments have initiated pipeline hearings with regard to Enbridge’s Sandpiper and Line 3 proposed pipeline projects. Initial hearings for White Earth are

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scheduled for June 4, 2015 at 10:00 AM at the Rice Lake Community Center.

Initial hearings for the Mille Lacs reservation communities are scheduled for June 5, 2015 at 10:00 AM at the East Lake Community Center, south of McGregor.

Rumors are also circulating that Enbridge is attempting to set up a meeting between Minnesota and Wisconsin tribes at Black Bear Casino on Thursday, May 28, 2015 at 9:00 AM. Certainly for the Chippewa, the Sandpiper and Line 3 pipelines (abandonment and replacement) projects will only pass-through and forever pose long-term environmental and economic threats for federally protected treaty rights in northern Minnesota with no direct benefits.



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OBVIOUS QUESTIONS

1. So what would be the good reason for granting a CN permit when we can see in our lifetime already the spills and damages from the pipelines that already are old and according to Enbridge need replacement (with abandonment?)
2. What is the reason that both pipeline projects and potential for maximum barrels per day are not considered in an environmental impact statement or what 6-8 pipelines might do over the course of the next 50 years?
3. Is this not the very problem the applicant Enbridge or NDPC has with its present U.S. Highway 2 mainline corridor for Line 3 and the Enbridge solution seems to be new Line 3 pipe, in a new place with no direct benefits to Minnesota?

We need to consider adopting enlightened and more ethical principles like those announced at the *Science and Environmental Health Network and the Women's Congress for Future Generations*

We have entered the Age of Extreme Energy. Every region is facing threats -- from Virginia to Wisconsin, from Nebraska and Iowa to California. New destructive techniques -- for mining, drilling, processing, and transporting fossil fuels -- are swarming across the land like locusts.

Communities and the natural world are threatened

Corporations come in and pick off individual landowners and county boards with threats of eminent domain and false arguments about

national security. They bring unparalleled threats to our water, land, and climate from tar sands, fracking, mountain-top removal, and deep drilling beneath our coastal waters. After they get what they're after, the corporations move on, leaving behind a ruined landscape, toxic water and soil, communities worse off than before.

The old legal principles that permitted exploitation of land and people have failed us, failed to protect the necessities for life -- air, water, land, water, plants, animals, and public health. To protect our communities and the natural world, we can establish new legal principles.

To succeed in this effort, we must stand together. The work of protecting our communities is lonely when we believe we are the only ones facing a monumental threat. We must stand together because we have a new story to tell and new legal principles to guide us. We must stand together because the Earth is too precious to hand over to faceless corporations enriching their shareholders at the expense of future generations. This story can only be told with all our voices.

We stand together around these legal principles, which are essential to protect the land, water and health of our communities:

1) The common wealth is the basis of the economy.

The commons include water, air, wildlife, roads, parks, schools and other things that we share. The commons are what provide value to private property. Farms can't get their grain to market without public roads. Businesses (and their owners, employees and customers) can't function without clean air and water. We get hunting and fishing licenses to limit the taking of wildlife, so our common heritage can endure.

2) Government has a fiduciary and public trust duty to protect the commons for present and future generations.

The primary responsibility of government is to take care of the common wealth and health of its people. Government's responsibility is not to make private parties (such as corporations) rich. It is not to steal common assets from the people with one hand and sell them as

private property with the other.

Government's responsibility is to protect the common wealth for all its people. That is the central purpose of government. This duty is mandatory, not discretionary.

3) The precautionary principle is the best decision-making tool for governments to use to fulfill their public trust obligations to the commons.

Most environmental decisions are made balancing the costs and benefits of an activity to the economy. The economy gets the benefit of the doubt rather than people's health, clean drinking water and breathable air. The precautionary principle stands for the idea that we need to take action to prevent harm in the face of scientific uncertainty. Methods for implementing the principle include heeding early warnings, setting goals, identifying and choosing the best alternatives to harmful activities, reversing the burden of proof and the democratic engagement of affected stakeholders.

4) No eminent domain for private gain!

Eminent domain is the unique power of government to "take" private property (with just compensation) and move it into the commons to create a public good. Eminent domain must not be used to move private property from one private owner to another private owner. Nor should it privilege a private corporation that will destroy any part of the commons.

Using eminent domain to give private property (or public land) to a corporation is an abuse of power by government. A polluting pipeline that enriches its shareholders and damages the commons is not a public good.

5) Citizens have a right and a duty to withdraw consent from government actions that threaten the common wealth, communities or future generations.

The public trust responsibility of government empowers citizens as beneficiaries to hold the government accountable when they fail to protect the trust.

In a democracy, the legitimacy of government derives from the consent of the governed. If government does not have the consent of the people then we face either anarchy or dictatorship. Local communities have a right to give or withhold their consent from activities that threaten their future. New mechanisms for giving consent must be implemented. These mechanisms include referendums, ballot measures and town hall meetings.

The corollary to consent is that government processes and decisions must be open and transparent.

6) Polluter Must Pay

The public cannot be stuck paying the bill for spills or other damage to water, land or air. Accordingly, bonds and other mechanisms sufficient to clean up a worst-case accident must be in place before ever siting a well, a pipeline, a mine or a toxic waste facility. The bond must be in cash, not the stock of the company and not self-insurance.

7) Tribal nations have sovereignty to protect their land and water. All treaties must be honored. We stand with tribes who are defending their land, water, people and heritage.

8) Corporations are not people and have no inherent rights. They operate solely at the will of the people. The recent legal claim that corporations have the right of free speech, and the power to exercise eminent domain, has had disastrous consequences for communities and for future generations. The fiction that corporations are people must end. Anything that doesn't breathe isn't protected by the Bill of Rights.

Our Stand

We stand by these principles because they are pillars of justice. Without justice the rule of law is meaningless.

(See Some Legal Principles Regarding Pipelines, Fracking and Mining:

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Defending our Communities and Future Generations, Science and Environmental Health Network and the Women's Congress for Future Generations 4/15.)

BIG PICTURE THINKING

No parts of this arrangement make any sense and we have other choices and applications presently before the Public Utilities Commission that accomplish essentially the same incremental transmission of oil per day. Let us not rush to a hasty decision that is certain to compound the present oil pipeline problems we have now. For these logical reasons *Honor the Earth* takes great exception the Report and verily believes that the certificate of need should be denied.

CONCLUSION

Based upon the reality of simultaneous, overlapping, concurrent pipeline projects and applications (mostly by Enbridge), files, records, exhibits and testimony provided by the Minnesota Department of Natural Resources and Pollution Control Agency, and for the foregoing reasons, *Honor the Earth* respectfully asks the PUC Commission to grant the motions for *Stay* of further Sandpiper PUC proceedings, and to establish a process *Consolidate* Sandpiper and Line 3 CN *stakeholder proceedings* for the judicial and public economy, fairness to the environment and its state and federal protection laws, respect for federally protected Chippewa property interests and treaty rights and recognition of the

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