

From: [Hartman, Larry \(COMM\)](#)
To: [Nelson, Casey \(COMM\)](#)
Subject: FW: Kennecott Proposed Alternative Route, MPUC Docket No. PL-6668/PPL-13-474
Date: Friday, April 04, 2014 5:45:32 PM
Attachments: [Kennecott Proposed Alternative Route.pdf](#)

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Sent: Friday, April 04, 2014 3:29 PM
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Subject: Kennecott Proposed Alternative Route, MPUC Docket No. PL-6668/PPL-13-474

Good afternoon Larry ,

Pursuant to the Minnesota Public Utilities Commission's February 11, 2014 *Order Finding Application Substantially Complete and Varying Timelines; Notice of Hearing* issued in the above-referenced docket and Minn. R. 7852.1400 Subp. 3, Kennecott Exploration Company submits the attached proposed alternative route segment related to North Dakota Pipeline Company LLC's proposed Sandpiper crude oil pipeline for your consideration. We plan to eFile the same this afternoon with the Commission – though eDockets is currently down.

The alternative segment is intended to avoid the Project's impacts on state metallic mineral leases held by Kennecott in Carlton and Aitkin Counties.

Please let me know if you have any questions or concerns. We appreciate your consideration and time.

Brian

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April 4, 2014

VIA E-FILING

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Dr. Burl Haar
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Minnesota Public Utilities Commission
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Re: **Kennecott Exploration Company's Proposed Alternative Route Segment**

***In the Matter of the Application of Enbridge Pipelines (North Dakota) LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota
MPUC Docket No. PL-6668/PPL-13-474***

Dear Mr. Hartman and Dr. Haar:

Pursuant to the Minnesota Public Utilities Commission's ("Commission") February 11, 2014 *Order Finding Application Substantially Complete and Varying Timelines; Notice of Hearing* issued in the above-referenced docket and Minn. R. 7852.1400 Subp. 3, Kennecott Exploration Company ("Kennecott") submits a proposed alternative route segment related to North Dakota Pipeline Company LLC's ("NDPC") proposed Sandpiper crude oil pipeline ("Pipeline Project"). The alternative segment is intended to avoid the Pipeline Project's impacts on state metallic mineral leases held by Kennecott in Carlton and Aitkin Counties.

As discussed below, Kennecott believes the proposed Pipeline Project will adversely affect Kennecott's non-ferrous metallic mineral interests in Carlton and Aitkin Counties, Minnesota (the "Tamarack Project"). The preferred route will intersect and limit Kennecott's access to mineral deposits critical to the exploration and potential development of copper nickel minerals it has leased from the State in Carlton County and adversely affect other environmentally sensitive property acquired by Kennecott in Aitkin County for the Tamarack Project.

Accordingly, Kennecott urges the Department of Commerce ("Department") and the Commission to fully consider the alternative route segment proposed herein. NDPC can, and should, adjust its preferred route to avoid impacting Kennecott's mineral interests by routing its proposed pipeline approximately one and one-half miles south of Kennecott's leases. Attachment A to these comments is a memorandum from Kennecott's consultant, Foth

Infrastructure & Environment, LLC, setting forth an alternative route segment, which avoids Kennecott's mineral interests while limiting environmental impacts ("FOTH Memorandum").

**I.
Kennecott's Mineral Interests in Carlton County**

Kennecott, a wholly-owned subsidiary of Rio Tinto (made up of Rio Tinto plc. and Rio Tinto Limited), explores mineral resources, evaluates mineral deposits, and develops mining properties. Kennecott is actively engaged in the exploration and evaluation of the Tamarack Project. Kennecott has expended tens of millions of dollars, drilled over 200 exploratory borings and conducted geophysical and other exploration, targeted and evaluated mineral deposits, undertaken environmental baseline studies, and acquired additional property in preparation for potential development of a mine at the Tamarack Project site. While still in an exploration stage, Kennecott believes there is significant potential for the Tamarack Project and the state of Minnesota.

The preferred route for NDPC's Pipeline Project may adversely affect or potentially preclude such future development at the Tamarack Project site. As proposed, the Pipeline Project will intersect some of the state metallic mineral leases held by Kennecott and currently being explored as part of the Tamarack Project (the "Tamarack Leases"). The Tamarack Leases which Kennecott believes the pipeline will intersect are identified in Table 1 below.

Table 1: Kennecott State Metallic Mineral Leases

Lease No.	Date of Issuance	Acreage	County
MM-10327	26 Feb. 2010	527.84	Aitkin
MM-9805	14 Dec. 2000	187.28	Carlton
MM-9806	14 Dec. 2000	498.34	Carlton
MM-10176	6 Dec. 2007	650.57	Carlton

The Tamarack Leases generally provide that the state's right to grant leases, permits, or licenses to any portion of Kennecott's mining interests shall not unduly interfere with Kennecott's exploration or mining operations. This restriction is derived from Minn. R. 6125.0700, Section 5 of the Form of Lease "for exploration for, mining, and removing metallic minerals belonging to the state" In the present case, Kennecott indicated in consultations with the Minnesota Department of Natural Resources ("DNR") that it does not believe that the DNR could grant NDPC a lease, permit, or license to route the Pipeline Project through the Tamarack Leases without unduly interfering with Kennecott's operations.

The intersection of the Pipeline Project with one or more of the Tamarack Leases presents significant operational and safety barriers with the potential to unduly interfere with both future exploration activities and mining operations associated with these mineral resources. Indeed, NDPC acknowledges that “[t]here is a potential that future use of . . . mineral resources will be precluded where the pipeline is installed across these resource deposits.” NDPC Sandpiper Environmental Services Sandpiper Pipeline Project, Minnesota Environmental Information Report (November 2013) (“MEIR”) at 5-7.2.

In its revised route permit application filed on January 31, 2014, NDPC further states at p. 5, that “[a]ny sand, gravel, or metallic mineral deposits located in the operational right-of-way will be unavailable for mining after installation of the pipeline. NDPC will continue to work with the MNDNR, private exploration companies, and affected counties regarding crossings of active mineral leases on state and county lands.” Kennecott requests that the Department and the Commission fully consider the sizeable economic impacts of limiting or precluding access to the mineral resources subject to the Tamarack Leases, including the potential direct investment in the Tamarack Project and royalty payments under the Tamarack Leases to the State.

Furthermore, Kennecott does not believe that the Pipeline Project can be co-located with the Tamarack Project and comply with Mine Safety and Health Administration regulations, particularly safety requirements for mining hard rock deposits under and near pipelines. Similarly, it is unclear whether the Pipeline Project could be co-located with the Tamarack Project and comply with Occupational Safety and Health Administration regulations applicable to pipelines. These and other considerations support Kennecott’s request that the Department and Commission fully consider Kennecott’s alternative route segment.

II.

Kennecott’s Interests in Aitkin County

In addition to the Pipeline Project’s direct impact on Kennecott’s mineral interest in Carlton County, the preferred route for the Pipeline Project intersects environmentally sensitive property in Aitkin County owned by Kennecott (the “Kennecott Property”). Portions of the Kennecott Property are wetland areas that contain cultivated and fallow stands of wild rice, a sensitive native plant species with cultural significance. Kennecott purchased the Kennecott Property in connection with the Tamarack Project as potential wetlands mitigation, and to unify two state wildlife management areas. The use of the Kennecott Property for these purposes in support of the Tamarack Project may be limited or precluded by the Pipeline Project.

In particular, adjacent to the Kennecott Property are two sensitive environmental areas: the Savanna State Forest and the McGregor Wildlife Management Area. While NDPC identifies the Savanna State Forest as a natural area within the preferred route, it does not identify the McGregor Wildlife Management Area and does not describe the environmental impacts specific to either of these natural areas. MEIR at 11-2. Furthermore, the Kennecott

Property has the potential to connect the Savanna State Forest and the McGregor Wildlife Management Area, making it an ideal property for future mitigation. If this connection were made, the Pipeline Project preferred route would cross right through the middle of a larger natural area, instead of just crossing the edge of the Savanna State Forest, a much more intrusive presence on the natural area. Ultimately, these impacts should also be weighed by the Department and the Commission in evaluating NDPC's preferred route.

III.

Legal and Policy Implications that Should be Considered

Kennecott respectfully requests that the Department and the Commission strongly consider the state's public policy favoring mineral deposit development in considering Kennecott's proposed alternative route segment. Minn. Stat. § 93.001 provides that "[i]t is the policy of the state to provide for the diversification of the state's mineral economy through long-term support of mineral exploration, evaluation, environmental research, development, production, and commercialization." Additionally, with respect to nonferrous minerals in particular, Minnesota law specifies that the "business of mining, producing or beneficiating nonferrous metallic minerals is declared to be in the public interest and necessary to the public welfare, and the use of property therefor is declared to be a public use and purpose." Minn. Stat. § 93.43(a).

To this end, Kennecott requested that DNR administer state metallic mineral leases to promote "orderly development of nonferrous metallic mineral mining, encouragement of good mining practices, and recognition and identification of the beneficial aspects of nonferrous metallic mineral mining." Minn. R. 6132.0200. Consideration of these state policies with respect to mineral development support full consideration of Kennecott's proposed alternative route segment.

Importantly, absent the issuance of a surface use authorization from the DNR, NDPC likely could not, upon issuance of a route permit, use its eminent domain authority pursuant to Minn. Stat. § 117.48 to condemn the Tamarack Leases as an alternative means of access to the property and thereby circumvent the "undue interference" standard in Minn. R. 6125.0700. Minn. Stat. § 117.48 states in relevant part,

Any corporation or association. . . engaged in or preparing to engage in the business of transporting crude petroleum, oil, their related products and derivatives. . . is authorized to acquire, for the purpose of such business, easements or rights-of-way, over, through, under or across, any lands, **not owned by the state** or devoted to a public purpose for. . . a pipeline for the transportation of crude petroleum, oil, their related products and derivatives. . . . To such end it shall have and enjoy the power of eminent domain. . . . **Nothing herein shall be construed as authorizing the taking of any property owned by the state**, or any municipal subdivision thereof, or the acquisition of any rights in public

waters except after permit, lease, license or authorization issued pursuant to law.

Emphasis added.

IV. Route Alternative

As discussed above, NDPC's proposed preferred route impacts Kennecott's mineral interests in a material manner. For this reason, as part of the route permit process, Kennecott is requesting that the Commission evaluate an alternative route segment that would ensure that the Pipeline Project is compatible with the state's interest in mineral development. Attachment A, the FOTH Memorandum, includes a Map of Kennecott's proposed alternative route segment submitted in compliance with Minn. R. 7852.2600, Subp. 1. In addition, appended as Attachment B is a more detailed Map showing the proposed alternative route segment with greater specificity.

Included in the FOTH Memorandum is a "desktop" review of the alternative route segment, including a brief description of the environment along the alternative route segment. As discussed in the attached FOTH Memorandum, the alternative route segment evaluated avoids Kennecott's mineral interests and minimizes potential environmental impacts. Finally, pursuant to Minn. R. 7852.2700, Kennecott believes that human and environmental impacts expected from pipeline right-of-way preparation and construction practices and operation would be substantially the same for the alternative route segment as the information provided by NDPC in its application.

Kennecott appreciates the Department's and the Commission's consideration of Kennecott's route alternative and looks forward to working with the Department and the Commission on the important issues raised by the Pipeline Project's proposed route. Please do not hesitate to contact me if you require additional information or have any questions or concerns.

Respectfully submitted,

STINSON LEONARD STREET LLP

Byron E. Starns

Byron E. Starns

Counsel for Kennecott Exploration Company

Attachments

ATTACHMENT A
FOTH MEMORANDUM



Memorandum

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www.foth.com

March 19, 2014

TO: David Simpson, Rio Tinto

CC: Steve Donohue, Foth Infrastructure & Environment, LLC
Andrea Martin, Foth Infrastructure & Environment, LLC

FR: Julianne Hanson, Foth Infrastructure & Environment, LLC

RE: Enbridge Sandpiper Pipeline Route, Carlton County, Minnesota

The objective of this work is to provide an alternative pipeline route and associated narrative and mapping to support KEX's participation in the Minnesota Public Utilities Commission public comment process. Foth Infrastructure & Environment, LLC (Foth) was asked to perform three tasks regarding the proposed Enbridge Sandpiper Pipeline (Sandpiper) route and potential impacts to KEX mineral title in Carlton County, Minnesota (Figure 1):

1. Perform a desktop data review using readily and publically available data of the proposed Sandpiper route.
2. Suggest a potential re-route alternative that would avoid KEX mineral title and that would avoid or minimize potential environmental impacts.
3. Compare the proposed Sandpiper route with the suggested re-route alternative.

Task 1

The following datasets were loaded into ArcMap and considered as part of this effort:

1. KEX Lease Area
2. National Wetland Inventory (NWI) Wetlands
3. Minnesota Department of Natural Resources (MDNR) Gap Stewardship
4. 1:24,000 Lake/Rivers
5. MDNR Migratory Waterfowl Resting and Feeding Areas
6. MDNR Native American Reservations
7. MDNR National Forest Boundaries
8. MDNR National Wildlife Refuge
9. U.S. Fish and Wildlife Service Critical Habitat (see <http://ecos.fws.gov/crithab/>)

Figure 1 incorporates datasets 1 through 4; items 5 through 9 have no mapped features within the area of interest.

Task 2

The Proposed Enbridge Pipeline route and the Proposed KEX Re-route are presented on Figure 1. Based on a high-level look at the data, a re-route was developed that avoided impacts to:

- ◆ KEX’s mineral title
- ◆ Structures visible on aerial photography

Further, the re-route was sited to avoid and minimize impacts to:

- ◆ NWI wetlands
- ◆ Stream and river crossings
- ◆ Areas with standing water visible on aerial photography

It should be noted that actual wetlands in the area could vary significantly from the NWI data. Only a full wetland delineation and survey of the area can confirm the presence, type, function, and value of wetlands within the area of interest.

Task 3

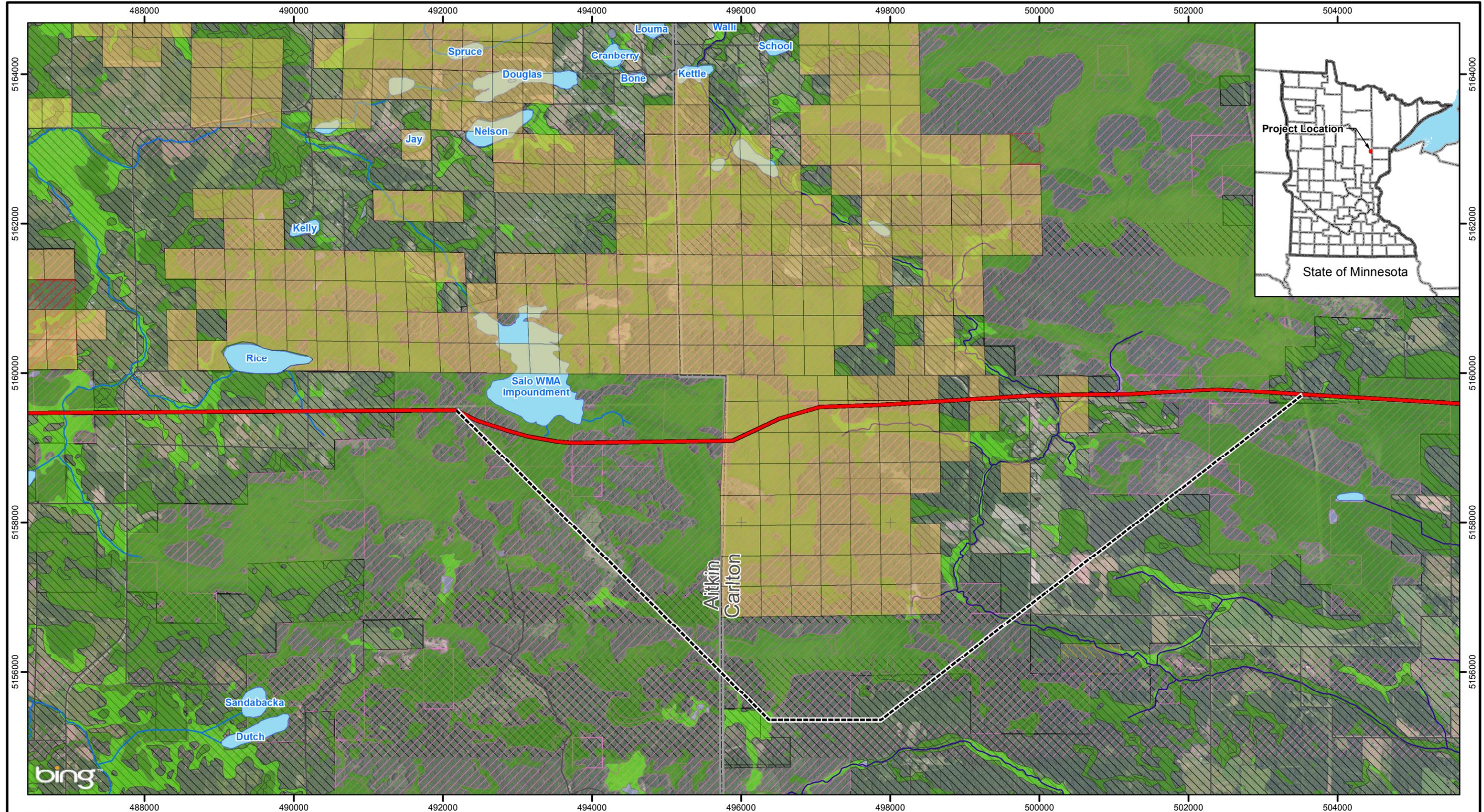
The suggested re-route would cross both state and privately owned lands. Table 1 compares the Sandpiper route and the suggested re-route from several perspectives of interest.

Table 1
Sandpiper and Re-route Comparison

Description	Proposed Enbridge Pipeline Route	Proposed KEX Re-route
Length (miles) between points of re-route (Figure 1)	7.2	9.0
NWI wetlands impacted (acres) ⁽¹⁾	66.7	74.7
No. of stream and river crossings	3	1
KEX mineral title impacted (acres) ⁽¹⁾	57	0
No. of KEX mineral title ¼-¼ sections	12	0

⁽¹⁾Based on an assumed 100-foot right-of-way.

Prepared by: JMH6
Checked by: BJW1



- NOTES:**
1. Imagery basemap from esri.com, courtesy of the Microsoft Corporation and its data suppliers.
 2. NWI wetlands data from the U.S. Fish and Wildlife Service. (<http://www.fws.gov/wetlands/Data/>)
 3. Other base data from Minnesota DNR, (<http://deli.dnr.state.mn.us/>).
 4. Horizontal coordinate system is NAD 1983 UTM Zone 15N (meters).

LEGEND

Proposed Enbridge Pipeline	Mn DNR Gap Stewardship Private	Freshwater Emergent Wetland
Proposed KEX Re-route	County	Freshwater Forested/Shrub Wetland
Tenement - Mn Mineral Lease	State	Freshwater Pond
Streams	Federal	Lake
Lakes/Rivers		Riverine
County Boundary		Other

Foth Infrastructure & Environment, LLC			
REVISED	DATE	BY	DESCRIPTION
CHECKED BY: JMH6		DATE: MAR. '14	
APPROVED BY: AKM		DATE: MAR. '14	
APPROVED BY:		DATE:	

KENECOTT EXPLORATION COMPANY

FIGURE 1
KENECOTT PROPOSED RE-ROUTE OF ENBRIDGE SANDPIPER OIL PIPELINE AITKIN AND CARLTON COUNTIES, MN

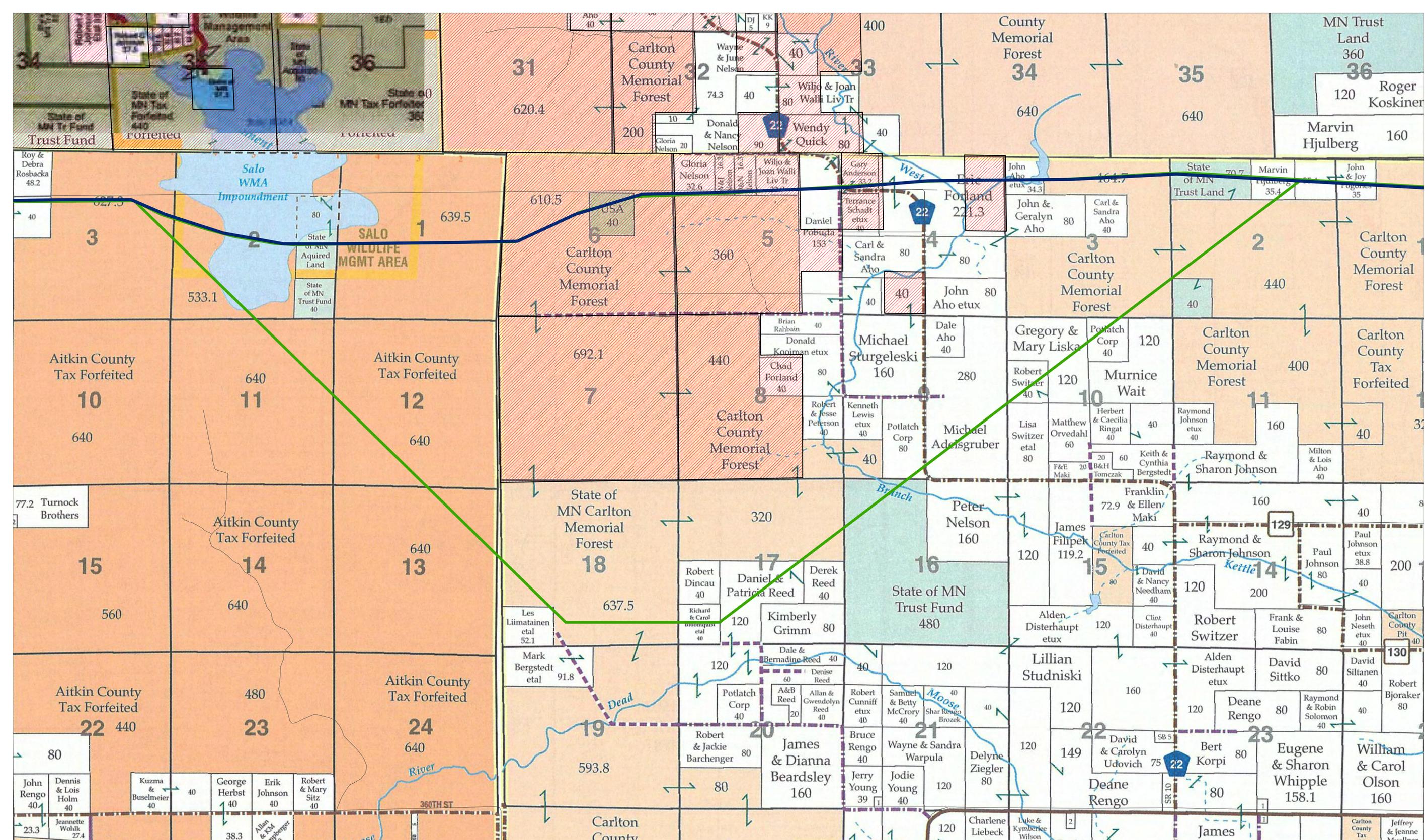
Scale: Date: MARCH 2014

Prepared by: BJW1 Project No: 08K777



ATTACHMENT B

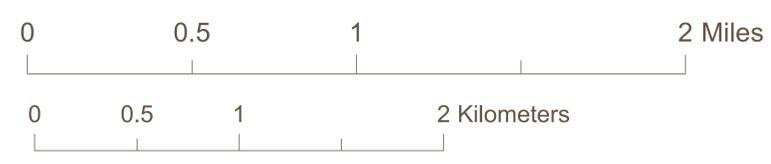
ALTERNATIVE ROUTE SEGMENT MAP



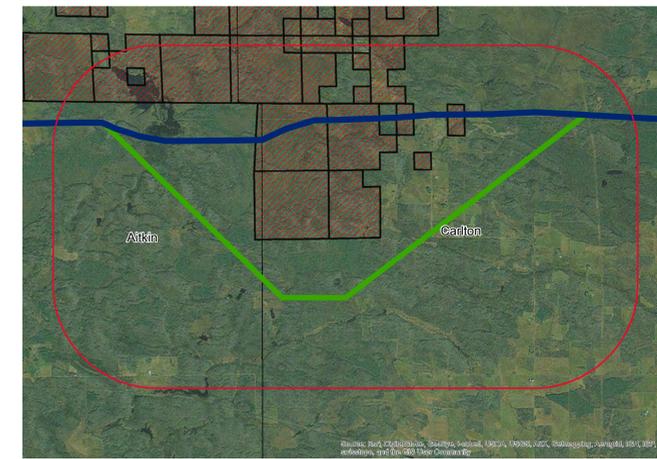
Proposed Enbridge Sandpiper Pipeline



- Enbridge Pipeline
- Kennecott's proposed route alternative
- Roads and Streets
- Tenement - MN Mineral Lease



Coordinate System: NAD 1983 UTM Zone 15N
 Projection: Transverse Mercator
 Datum: North American 1983
 False Easting: 500,000.0000
 False Northing: 0.0000
 Central Meridian: -93.0000
 Scale Factor: 0.9996
 Latitude Of Origin: 0.0000
 Units: Meter



**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

<p><i>In the Matter of the Application of Enbridge Pipelines (North Dakota) LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota</i></p>	<p>MPUC Docket No. PL-6668/CN-13-473</p> <p>OAH Docket NO. 84-2500-31260</p> <p>CERTIFICATE OF SERVICE</p>
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The undersigned hereby certifies that a true and correct copy of the **KENNECOTT EXPLORATION COMPANY’S PROPOSED ALTERNATIVE ROUTE SEGMENT** on behalf of Kennecott Exploration Company has been served today by e-mail and/or U.S. Mail to the following:

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/s/ Catherine M. Wood

Dated this 4th day of April 2014

Catherine M. Wood