



May 27, 2016

Direct Dial: 320-656-3508
Jvonkorff@RinkeNoonan.com

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul MN 55101

Re: In the Matter of the Application of North Dakota Pipeline Company LLC
for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota
MPUC Docket No. PL-6668/CN-13-473; OAH Docket No. 8-2500-31260

In the Matter of the Application of North Dakota Pipeline Company LLC
for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota
MPUC Docket No. PL-6668/PPL-13-474; OAH Docket No. 8-2500-31259
Our File No. 24724-0001

Dear Ms. MacAlister:

Carlton County Land Stewards submitted their scoping comments to the designated email on May 26, 2016, pursuant to the Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings issued on April 11, 2016. Today we are e-filing a copy into MPUC Docket No. PL-6668/CN-13-473 and MPUC Docket No. PL-6668/PPL-13-474, so that it is available to all parties. Thank you.

Sincerely,

Gerald W. VonKorff
Gerald W. Von Korff
/JVK

Attachment

Aug. 4, 2014

Minnesota PUC

The Polk County Board of Commissioners is on record — in a unanimous action — in support of the proposed route of the Sandpiper Pipeline. We believe that the route developed by Enbridge, in conjunction with local governments, not only makes sense but meets all rules and regulations regarding safety and the protection of the environment.

Any delay in the construction process must be avoided.

The Sandpiper is the best method for the delivery of oil to refining facilities at Superior, Wis., and to the East. The proposed route crosses the entire width of Polk County. The message that we are hearing from constituents is that there is strong support for the project. The only concern that we hear — one that we as commissioners share — is that all existing rules regarding safety and the protection of the environment are followed.

Polk County could benefit greatly from the Sandpiper. Enbridge is already the top property taxpayer in the county at close to \$2 million a year. This is about 10 percent of our total county tax levy. The Sandpiper would add to that total. Like all local government units, Polk County could make good use of additional revenue to provide better services without a tax consequence for property owners. It is estimated that local units of government in Minnesota would see an additional \$25 million in property taxes from the Sandpiper.

Should the oil that is scheduled to be delivered to the Superior, Wis., terminal be shipped by truck instead, we could see 1,300 trucks a day going down U.S. Highway 2... right through Polk County and right through many of the lands that opponents want avoided. That could occur sooner rather than later if there is a route change that would further delay construction of the pipeline. Beyond the serious safety issue that this would present is the fact that the heavy traffic would raise havoc with road systems all the way across the state.

The use of railroads to transport oil is not a good option. Beyond the safety issues that have occurred recently is the fact that the extensive use of rail for the movement of oil has created a very serious problem for agriculture in that it has become extremely difficult to arrange trains to move grain to market. Because of this, huge amounts of last year's crop still remain in storage on the farm or at country elevators. Virtually all existing storage is full. There is no room for this year's crop. This already a critical situation that is only going to get worse until a new pipeline is in place for the moving oil to refineries.

OPINION > COLUMNISTS

Jim Stratton: A 'silent wall of disdain' at Minnesota regulatory agencies?

By JIM STRATTON |

February 18, 2016 | UPDATED: 18 hours ago

Recent reports disclosing the discovery of pejorative emails by a Minnesota Pollution Control Agency regulator pertaining to the Sandpiper oil pipeline are deeply concerning and raise serious questions about the fairness, objectivity and ultimate credibility of state agencies on regulatory matters.

The Sandpiper project is a key component of the economies of numerous counties, cities, townships and school districts along its route. It has strong support in Greater Minnesota, not only because of the jobs, sturdy tax base and other economic benefits it delivers, but for the ecological benefits it provides as a safe, environmentally sound alternative to hauling Bakken light crude by rail through our towns, or over our already congested and aging highway system.

We have wondered with frustration at the delays in approving this project and the benefits it would provide to local communities across the state. If these delays are in any way attributable to the personal beliefs of staff within the department — who are actively working in opposition rather than in strict adherence to applicable rule and law — those individuals need to be identified and weeded out of the process.

Our regulatory process relies on the confidence that it is administered by state-agency staff who are impartial and not motivated to put personal political philosophies ahead of a strict adherence to the laws of the state.

The revelation that a state regulator would be working in active opposition to a permit application is a startling development that raises a disconcerting but critical question about how deep this problem runs within the agencies of the state.

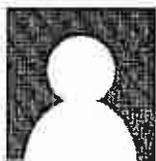
I hope Gov. Dayton and legislative leadership can appreciate the gravity of the concern that exists over this discovery. It tempers a notion that is widely held among public- and privately held organizations alike, which understand — but are afraid to say — that a silent wall of disdain exists deep within the regulatory agencies for projects that would deliver positive economic benefits to Greater Minnesota.

There is a clear and growing perception that you cannot build in this state anymore, because it is becoming exhaustive and far too costly to run the precarious obstacles of the bureaucratic minefield if your project is out of favor with the political beliefs of agency regulators.

This is a circumstance that did not always exist and raises real questions about the type of employee the agencies have been hiring over the last 10 to 15 years. Any investigation should take a long look at correcting an imbalance in hiring practices that do not recognize the value of a candidate who understands economic development and environmental protection are not mutually exclusive.

The Minnesota Rural Counties Caucus supports the request for a full and independent investigation into this incident by the Office of the Legislative Auditor, and encourages any investigation into whether other employees are working in advocacy roles against good projects, rather than abiding by standards established under the law.

Jim Stratton of Alexandria is chair of the Minnesota Rural Counties Caucus and a Douglas County Commissioner.



Jim Stratton



Board of Commissioners

Polk County Government Center
612 N Broadway – Room 211
Crookston, MN 56716-1452
Phone: (218) 281-5408
Fax: (218) 281-3808
www.co.polk.mn.us

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COUNTY ADMINISTRATOR
CHARLES S. WHITING

June 24, 2014

Letter to the Editor:

It is very concerning that the public comment period for the Sandpiper Pipeline project through Minnesota has been reopened and extended beyond the end of the original period. Any delay in the approval process must be avoided. This project needs to be decided on its merits and by compliance with all existing rules and regulations; not extended and/or delayed because of the highly organized efforts of a few opponents who keep repeating their views at every possible hearing and opportunity.

The Sandpiper is the best method for the delivery of oil to refining facilities at Superior, Wis., and to the East. The proposed route of this pipeline crosses the entire width of Polk County. The message that we are hearing from residents is that there is strong support for the project. The only concern that we hear — one that we as commissioners share — is that all existing rules regarding safety and the protection of the environment are followed.

The nation needs the Sandpiper, along with the Line 67 upgrade and the Keystone, as a way to provide jobs, to bolster the economy and to eliminate all importation of oil from countries that would do us harm.

Polk County needs the Sandpiper, too. Enbridge is the top property taxpayer in the county at close to \$2 million a year. This is about 10 percent of our total county tax levy. With the construction of the Sandpiper, tax revenues for local governments — and this is by Enbridge Company estimate — could increase by \$4 million in the first year alone. This revenue would go a long way toward providing better services without a tax consequence for our property owners.

While opponents are citing situations — most of which are no more possible than lightning strikes — that could cause environmental damage, we believe the frequency of these possibilities is highly unlikely and that pipelines are the safest and most efficient method for moving the needed oil product.

Should the oil that is scheduled to be delivered to the Superior, Wis., terminal be shipped by truck alone — with the Bakken now producing a million barrels a day — we could see 1,300 trucks a day going down U.S. Highway 2... right through Polk County and right through many of the lands that opponents want avoided.

Beyond the serious safety issue that this would present is the fact that the heavy traffic would raise havoc with road systems all the way across the state.

The use of railroads to transport oil is not a good option either. Beyond the safety issues that have occurred recently is the fact that the extensive use of rail for the movement of oil has created a very serious problem for agriculture in that it has become extremely difficult to arrange trains to move grain to market. Because of this, huge amounts of last year's crop still remain in storage on the farm or at our country elevators. Virtually all existing storage is full. There is no room for this year's crop. And this already critical situation is only going to get worse until another method of moving oil to refineries is in place.

The safety record and efficiency of pipelines makes it the best alternative. The State of Minnesota needs to keep the approval process on schedule to make it happen within all existing rules and regulations; not allow the procedure to be extended beyond the normal process or otherwise be delayed.

Sincerely,

Craig Bunes
Polk County commissioner, Dist. 1

Warren Strandell,
Polk County commissioner, Dist. 2

Nick Nicholas
Polk County commissioner, Dist. 3

Warren Affeldt
Polk County commissioner, Dist. 4

Don Diedrich
Polk County commissioner, Dist. 5

MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350

St. Paul, MN 55101

In the Matter of the Applications of Enbridge Pipelines (North Dakota) LLC for a Certificate of Need and Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota MPUC Docket Nos. PL-6668/CN-13-473
And PL-6668/PPL-13-474

Carlton County Land Stewards' Scoping Comments

Carlton County Land Stewards (CCLS) submits the following EIS scoping comments.

This document was prepared by members of the organization and edited by counsel.

I. INTRODUCTION AND SUMMARY

Carlton County Land Stewards (CCLS) appreciates the significant advances in approach in the scoping document. As discussed below, CCLS has been concerned from the beginning of these proceedings that the initial environmental review prepared by applicant was deeply flawed, and that by choosing the single proposed pipeline route based upon that document, the entire proceedings were set on the wrong course. The route was clearly selected primarily based upon cost factors. The solicitation of pipeline customers in an open season was, in turn, targeted to the pre-selected route, and thereafter, the process before the ALJ virtually ruled out other alternatives. For this reason, we urge that the new EIS process genuinely explore alternatives such that the process is not once again prejudiced by the pre-selection of a route.

The Dakota Access proceedings in Iowa demonstrate that there is an economically viable non-Headwaters route to carry petroleum from the Bakken fields to refineries operated by

Marathon and other major consumers of pipeline services. Minnesota Statutes Section 116D.04 subdivision 6 requires consideration of these alternatives. When those economically viable alternatives are not considered, simply because the applicant sought to lock in its route choice through a FERC open season process, the deck is essentially stacked against a true analysis of how petroleum can be best routed safely through pipelines from Bakken to Midwestern refineries with the least Minnesota environmental damage.

We urge, then, that the environmental review include the following components:

- **Impacts not limited to USA's.** The review of impacts to the environment must not be limited to federally designated environmentally unusually sensitive areas. That designation does not exhaust the areas for which there is potential for environmental effects.
- **Impacts Scientifically Based** The review should avoid repeating the flaws in the EAS and CEA, which simply categorized the route by ecological category. In this regard, the testimony of Dr. Chapman should be reviewed with care: it describes the importance of weighting ecological resources by importance and by risk of impact. Don't merely "count the acreage" of an ecological land category: actually use science to evaluate and rank environmental impacts.
- **Impact Assessment for Major Catastrophic Events** In assessing the risk of harm, catastrophic events should not be limited to events which the applicant asserts are likely. The EIS should compare for different routes the impact of hypothetical major catastrophic events, and should also recognize that catastrophic events may be more likely in areas where the line is not regularly observed. Also, the process should recognize that often catastrophic events occur nearer the end of the useful life of a pipeline, and during times when the pipeline operator may have relaxed its oversight, as happened in the case of Kalamazoo. It is unreasonable to assume that it is impossible that this operator might reduce its vigilance, reduce its maintenance and investment in pipeline safety, in the same way that it has done with other pipelines. The EIS should compare and consider the possibility that the pipeline will be operated at a time that its operator is economically stressed, or that the operator deems investment in necessary maintenance in the line is not prudent. Many of the most catastrophic events occur where an improvement is nearing the end of its economically useful life.

- **Transparently Use GIS Data.** Make GIS data, including routing and resource shapefiles fully and readily available to parties. In the prior proceeding, access to this data was cumbersome. Access to this data should be available long before testimony is due.
- **Apply Modern Route Comparison Software to Route GIS Data.** In our prior submissions we have described the modern technique which allows route evaluation using GIS Data and routing criteria to be applied to that data. We provided a brief scholarly article describing that technique. We have since learned that the applicant in the Dakota Access proceedings in Iowa actually used this technique to tune their route in a way that would reduce environmental harm. Using GIS data and route evaluation software, it should be possible to compare routes based on different weightings, and access to this technology should be afforded to all parties.
- **Test Applicant's Assertion that Alternative Routes would not Efficiently Carry Petroleum from Bakken to Midwestern Refineries.** Since these proceedings commenced, Iowa has granted a permit to the Dakota Access line, and that approval is persuasive evidence that petroleum can be carried efficiently and consistent with applicable state standards from Bakken to Midwestern refineries. The fact that applicant conducted an open season limited to a single pipeline route simply does not establish that that route is the only, or the best, pipeline route from an economic standpoint. Keystone similarly carries petroleum to Midwestern refineries. This process should provide competent neutral economic consultation to determine whether it is economically necessary, as applicant suggests, to route petroleum through the Mississippi Headwaters. It would be irresponsible to accept applicant's self-serving assertion that routing petroleum from Bakken and Western Canada through the headwaters and near Lake Superior, when actual route development seems to establish otherwise.
- **Soil micro biome in the right-of-way.** There needs to be an exploration of how pipeline construction activities will affect the soil micro biome in the right-of-way and closely adjacent areas. . The ability of certain classes of bacteria (Thiobacillus thiooxidans being an example) to cause corrosion in buried pipe is already recognized. There may be other hazards to the pipeline in the form of micro-organisms. Also, the soil biome has billions of organisms in each cubic foot. It is a vast a rich source of life. We need to recognize that current pipeline construction activities totally disrupt this environment. We need to explore how this natural habitat is affected. What does this disruption do to the micro biome and how does damage to the micro biome effect the habitat that can easily identify and recognize? A trained Microbiologist in Soil Microbiology needs to be consulted. A Microbiologist or a Biologist does not have the specialized training in the same way one

would not want a Family Practice physician to perform heart surgery. Below there are several places to learn more about this subject¹:

The Carlton County Land Stewards (CCLS) is a grassroots group of families, farmers, landowners and individuals who opposed the creation of a new pipeline right of way through the sustainable agriculture district in Carlton County, but who also strongly favor application of sound environmental principals through a robust environmental review to the location of the future pipeline. CCLS was formed by families directly impacted by the original Southerly route as submitted initially by Applicant. CCLS has several interests in these proceedings. It sought to protect important sustainable and organic farming regions which directly impact members operations. That particularized interest has been protected by the rerouting of the proposed pipeline outside of the organic and sustainable farming region as it exists today, and for that, CCLS is appreciative.

At the same time, as a result of its commitment to broad principles of sustainability, the organization resolved that it would not be driven solely by “not in my back yard” principles, but would rather advocate that the PUC, DOC and other State agencies use environmental review techniques that would locate any necessary pipeline in that portion of Minnesota least vulnerable to environmental harm from construction of the pipeline and least vulnerable to catastrophic irreparable damage in the event of an accidental spill. It is this second interest that a pipeline, if necessary, be located so as to inflict the least damage, that CCLS believes has not been served.

¹ 1. Using Soil Health Indicators to Follow Carbon Dynamics in Disturbed Urban Environments- A Case Study of Gas Pipeline Right-of-Way Construction: Cornell University, Department of Crop and Soil Science, Ithaca, NY 14853. Corresponding author's email: rrs3@cornell.edu
2. Environ Monit Assess. 2014 Nov; 186(11):8037-48. doi: 10.1007/s10661-014-3986-0. Epub 2014 Aug 12. Xiao J1, Wang YF, Shi P, Yang L, Chen LD.: Potential effects of large linear pipeline construction on soil and vegetation in ecologically fragile regions.

CCLS initially strongly supported consideration of co-location of the proposed line in the existing Northerly corridor. It reasoned that co-location would minimize the disturbance of previously undisturbed lands and waters. That seemed also consistent with the PEER principles that strongly disfavors development of new corridors. CCLS submitted comments questioning the completeness of the Environmental Assessment Supplement in the docket and strongly expressing our concern that the EAS, while listing resources, did not apply scientific principles to determine the least impact, as Chapter 116D requires. CCLS began to recognize that the Environmental Assessment Supplement wasn't an environmental review at all, but rather an inventory of resources, a counting of the number of those resources in the vicinity of the proposed pipeline. The organization became convinced that Environmental Assessment Supplement failed to comply with Chapter 116D, because it merely functioned as a list of resources, rather than a scientific comparison of impacts.

The CCLS position on routes and system alternatives, then, is not based upon naked self-interest. The organization has not yet taken a position on which route is the best, or which system alternative is the best. The organization's position, rather, is that the best alternative must come from a full development of a record, and that development cannot be adequate unless there is a full and robust compliance with the letter and the spirit of applicable law and policy, including Chapter 116D, the CON, routing and other permitting statutes and rules, and the key state regulatory requirements that protect public waters and natural resources such as Minnesota's Water Policy, Chapters 103A-103G, Chapter 83A-102.

CCLS intervened hoping to add value to the way in which Minnesota evaluate environmental alternatives in pipeline proceedings. CCLS has never sought delay for sake of delay. Its mission in this case is to advocate for a high quality process that embeds the letter and

spirit of MEPA so that Minnesota makes the finest long term decision about where and whether to locate conveyance systems transmitting petroleum from Bakken fields to their non-Minnesota refineries. We continue to be interested in working with the Commission, the parties, with DOC and interested agencies in assuring that the process adopted will lead to an infrastructure decision that protects Minnesota's pristine waters while accommodating the need safely to transport petroleum.

II. FURTHER DISCUSSION

Importance of Using Science to Describe the Quantity and Quality of Impacts.

CCLS recognizes that the proposed scoping makes advances in the use of science to describe the quantity and quality of environmental impacts. We remain concerned, however, that the EIS recognize that simply providing un-interpreted data to the public is not sufficient to provide the kind of robust comparison of environmental impacts that MEPA intends. To illustrate this point, CCLS retained Dr. Chapman because it believed that applicant was deviating materially from the robust environmental review intended by Chapter 116D. The organization hoped to provide the ALJ and the Commission with actual scientific evidence on how a quality environmental review should work. CCLS did not instruct Dr. Chapman to select any particular route, but as Dr. Chapman's testimony indicates, he was asked to use his training and experience constructively to make recommendations that would assist the Commission in evaluating the environmental review. It is CCLS fervent hope that the PUC will benefit from submissions offered for this purpose, and that the end-result will be a pipeline system that inflicts the least environmental harm, and only if the pipeline is actually necessary. We urge that the RGU, the consultants, and others working on the EIS review Dr. Chapman's recommendations on creating a quality comparative scientifically based document. In his testimony, Dr. Chapman shows that

identifying an impacted area as forested is not sufficient to quantify the impact of fragmenting that forest. The report should recognize for each resource, there must be a science based assessment of impacts, and a weighting of those impacts specific to the resource impacted.

The alternative review demands that the environmental review must culminate in an environmental impact statement quality document which compares the impacts of the proposed route to the impacts of reasonable alternatives. This impact statement has traditionally been called an Environmental Assessment Supplement. We explained that just like the traditional environmental impact statement, the environmental assessment supplement should be drafted after consultation with the key Minnesota and federal agencies with jurisdiction over public lands and waters. Yet NDPC's EAS was drafted in a vacuum. It evidences no attempt to consult and acquire information from the DNR, the MPCA, the US Army Corps of Engineers, or the tribal authorities with interests in management of resources of importance to tribal members.

Scoping an environmental review is extremely important to assuring a high quality environmental review. It provides a formal mechanism for other agencies (DNR, MPCA, USACE, tribal authorities) to lend their expertise to the authoring agency. It affords an opportunity for the authoring agency to correct errors and omissions in the work plan before the work plan is executed. It helps identify where DOC needs to go outside the expertise of its consultants. Scoping is an important "action-forcing" component of environmental reviews, because it gives the public and interested parties an opportunity to influence the environmental review. Scoping is especially important to citizen parties and their advocates because it is the method by which they convince government agencies to supply scientific analysis at government expense. When the agency misses an issue important to the applicant, the applicant can fill that gap with an expert.

In our introduction, we raised the concern that the environmental analyses previously conducted mechanically counted the various ecological resources through which a route passes, and then proceeded to leave to parties to advocate which impact was greater or lesser. Because this happened in both the EAS and CEA, CCLS is taking pains to emphasize that an Environmental Impact Statement must do more than this: it must use science to describe the impacts and evaluate those from a scientific perspective. Ms. Ploetz (and for that matter, the CEA) tells us, for example, that both artificial drainage ditches and shallow lakes are bodies of water and that the environmental impact review does its job by pointing out that if a pipeline has a catastrophic spill event that the environmental impact will be the same. Both will get polluted, and so by telling us what features the pipeline crosses, and leaving it to the rest of us to draw our own conclusions from that information, the environmental review is objective and complete. But that contention abdicates the responsibility of an environmental review to tell us that shallow lakes are especially vulnerable to pollution and that they are the subject of a great body of ecological study, entitled to special treatment under the Minnesota regulatory regimen. NDPC and DOC-EERA have taken the impact out of the Environmental Impact Statement and thus have eviscerated its fundamental purpose.

The Department of Commerce too inventoried geographic features and left lay people to make scientific conclusions they are not qualified to make. The reason that an environmental impact statement, properly prepared, is given deference by the Courts, is that it is a product of experience, regulatory experience, scientific experience all driven by the public interest, rather than a business motivation. Dr. Chapman explains

In other projects we have worked on with multiple indicators of effects, we identify the significance of an effect and weight it relative to other effects using scientifically-defensible criteria. Criteria are developed from the scientific literature, employing our professional judgment and that of others. The

significance is based on the intensity, extent, and duration of the effect, as discussed above. Data are fitted to a 0-1 scale (normalization) in order to make all effect indicators equal. Lastly, the effect indicator is multiplied by the weight of the significance of the effect. Care must be taken to balance the indicators to both accounts for the variety of effects while not double-counting indicators. The most important effects must be included, with other effects included as needed to account for as many effects as feasible. For example, should the loss of the economic value of timberland, cropland, and minerals be included, and if so, given a low weight? Essentially, the weighting represents a summary of scientific knowledge about the effects of pipelines.

An environmental review cannot simply record that a project is near water bodies: it needs to apply scientific judgment combined with regulatory criteria, to make a determination of which alternative has the greatest negative impacts.

A weighting would identify routes with the greatest and least total effect as determined by careful consideration of the scientific information. It would identify routes that are best at avoiding natural resource effects. The weighting would also reveal the driving environmental effects behind a route's weighted result, and provide data for a discussion of, to use a simple example, the trade-offs in avoiding groundwater contamination on one route versus loss of rare species habitat on another. It may lead to combining different route segments in order to balance the trade-offs in effects. In the prior subsections, we have described in a general way the objections lodged by key witnesses or agencies, but we think it is important to list some of the specific objections to the quality of the environmental reviews described by the witnesses.

Involvement of United States.

CCLS has been concerned about the lack of coherent collaboration between the NEPA and MEPA processes so far. We encourage robust use of the expertise of federal agencies to assist in the EIS. The two processes, NEPA and MEPA are both designed to work together. See 40 CFR § 1503.1 (After preparing a draft environmental impact statement and before preparing a

final environmental impact statement the agency shall: (2) Request the comments of: (i) Appropriate State and local agencies); 40 CFR 1501.7 (a) As part of the scoping process, the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds).

One of the critical features of NEPA is to allow public officials, including state public officials, to obtain information that will help them take a position on the proposed project. 40 CFR § 1500.1 (NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments and public scrutiny are essential to implementing NEPA.)

Specific Examples of Past Concerns.

CCLS understands that the EIS now envisions a new approach to environmental analysis. We do not assume that past issues will be repeated. However, we provide from our prior documents a list of specific concerns that we hope will be corrected in the MEPA compliant EIS:

Treatment of Impacts to Undisturbed Lands. The environmental review's treatment of impacts to undisturbed lands versus previously disturbed lands is inadequate and fails adequately to:

- A. Include impacts of fragmentation to forests due to the construction of corridors
- B. Include sites containing area sensitive avian species
- C. Describe the impact of invasive species introduced
- D. Acknowledge construction through undisturbed areas results in habitat loss, conversion, degradation, fragmentation

- E. Recognize Ag land has impacted soils already
- F. Recognize that BMPs are not practical for undisturbed areas
- G. Understand that Organic and Sustainable agriculture areas are uniquely valuable state resource

- Incomplete Topographic Comparisons. The Environmental review failed to provide completed topographic relief comparisons.
- Failure to Consider the Value of Water Resources Crossed. The environmental review fails to consider the value of water resources being crossed and provide alternative routes or systems to avoid these areas.
- Tamarack State Mineral Lease. The environmental review fails to consider the Tamarack state mineral lease in route determination and fails to identify safety concerns on the possibility of having both future crude oil pipeline and mining operations on the same state-owned land.
- Consideration of Co-Location. The environmental review fails to consider drawbacks to co-location. This concern is compounded by the failure to include consideration of the proposed connected action under way in the Line-3 Docket and represents a flagrant violation of the requirement that connected actions should not be segmented.
- Risk Assessment. The environmental review fails to include a risk assessment of potential damages as a result of an oil leak.
- Consideration of Impact of Corridor Width. The environmental review fails to use varying widths of corridor for assessment.
- Inadequate Treatment of Threatened and Endangered Species. The environmental review fails to adequately address Minnesota State listed threatened and endangered species and Minnesota sites of biodiversity significance.
- Failure to Address Undisturbed Soil Preservation. The environmental review fails to adequately address standard measures of preserving undisturbed soil and related impact to undisturbed areas.
- Failure Adequately to Utilize Hydraulic Conductivity Ratings. The environmental review fails to adequately conduct hydraulic conductivity ratings at appropriate standard pipeline depths.

In this regard, we make special reference to the conflict in testimony between Barr Engineering's Mr. Wuolo, retained by Enbridge, and Bob Merritt, who testified on March 12, 2014. Mr. Merrit is a Minnesota Licensed Professional Geologist with 32 years of experience as Minnesota Department of Natural Resources Area Hydrologist. He holds a M.S. in Hydrology. Mr. Merritt

testified that his concerns about the vulnerability of groundwater in the area traversed by the proposed pipeline led to a detailed hydrological study of the Straight River region. (U.S. Geological Survey Water-Resources Investigations Report 94-4009). Mr. Merritt submitted a copy of the study for the record.

The study, Stream-Aquifer Interactions in the Straight River Area, Becker and Hubbard Counties, Minnesota, studied a representative portion of the investigation area is underlain by an extensive surficial aquifer consisting of glacial outwash. Stark Study, page 3. The study explains:

This aquifer is part of a large surficial aquifer system, called the Pinelands Sands (Helgesen, 1977), which underlies 770 square miles of Becker, Cass, Hubbard, and Wadena Counties. Confined drift aquifers also underlie most of the investigation area. (Stark Study, page 3).

According to the Stark study, the aquifer system in this region values of vertical hydraulic conductivity, which are higher than those reported for other parts of the glaciated northern United States. (Stark Study page 32) The study further indicates that residence-time data obtained in the study are “significant because they indicate that waters in both the surficial and in the uppermost confined-drift aquifers are susceptible to contamination from local recharge.” (Stark Study at page 48) Further, the study indicates that this region is on the Straight River which contains water that is underlain by highly transmissive surficial and confined-drift aquifers.

The Stark study contradicts Mr. Wuolo, a hydrologist for Barr engineering, Mr. Wuolo did not assist in the preparation of Environmental Assessment Supplement. Mr. Wuolo suggested that he believed that aquifers in the Becker, Cass, Hubbard County region were not very transmissive, but that testimony is completely contradicted by The Stark study and the

testimony of the former DNR area hydrologist for this region. The study and Mr. Merritt's presentation appear more reliable in this regard. However, this dispute reinforces the recommendation of the DNR that a properly constructed Environmental Assessment Supplement should have contained a scientific assessment of the actual water resources impacted.

This is the kind of dispute that is not resolved in an environmental review by a lay administrative law judge. Environmental reviews are conducted by agencies with expertise, or if they lack expertise, by a team of professional experts, under the direction of the agency, who engage in applying science, technical skills and regulatory accountability, to resolve controverted issues. Under MEPA and NEPA, controversies of this nature are resolved by an agency with expertise combined with regulatory accountability. The danger of trying these issues to a lay judge, even a highly skilled, fair adjudicator, is that administrative law affords credibility to the decision because it is made by a team of experts applying agency expertise. And, as we explain later, that is the great flaw in trying to center an environmental review on a listing of geographic features headed by a person with a bachelor's degree in environmental studies.

We continue now with our list of identified flaws in the Environmental Reviews.

- Lack of water sensitivity and flow-path analysis. The Environmental Assessment supplement fails to provide comparison of potential environmental effects among the system alternatives, including failing to complete a water sensitivity analysis and flow path analysis. Instead, the assessment documents merely list the number of resources in the region, which does not provide adequate data to determine which potential routes pose the greatest risk to resources.
- Failure to Assess Value and Impact on Public Lands. The environmental review fails to distinguish between all public lands and inadequately address the functionality and service provided by said lands to the public. The environmental review fails to clearly define definition of impaired water across different regions crossed in the suggested route; therefore it fails to adequately account for existing water quality conditions.
- Failure recognize biological quality rankings. The environmental review fails to account for the biological quality ranking of specific communities; hydrological continuity, species diversity, disease, regeneration, and presence of invasive species.

- Public Land Crossings. The environmental review fails to quantify the acres of public land crossed, therefore the varying sizes of parcels is not accounted for and the impact assessment cannot be evaluated appropriately.
- Spire Valley AMA. The environmental review fails to adequately provide information regarding the Spire Valley AMA therefore impact assessment does not include all potential impacts and ramifications:
 - A. Fails to conduct geotechnical borings, which must be done in order to adequately assess the depth to aquifer located in the Spire Valley AMA and assess the potential of puncturing the artesian aquifer
 - B. Clarification of pipeline construction must be made regarding placement above or below ground
 - C. Fails to include potential impacts to the hatchery, the trout stream and aquifer at the Spring Brook crossing
- Spill risk and cost Analysis. The environmental review fails to include cost analysis based on evaluation of a system's ability to reduce the risk of a costly spill to a sensitive environment area.
- Failure to Recognize Consequences of Traversing Glacial Moraines. The environmental review failed to recognize that significant data gathering must be performed in the SA-Application route that transverses glacial moraines prior to understanding the movement of oil discharge in the area and understand the difficulty to accurately assess the potential for groundwater contamination based solely on GIS layers.
- Neglect of Wild Rice Resources. The environmental review Failed to include an impact assessment for the native wild rice of Minnesota.

We are bringing up these specific shortcomings as a cautionary tale as to what to not ignore in the EIS scoping document.

Do not Prejudice Proceedings with Administrative Conclusions Arrived without the Benefit of an Environmental Impact Statement.

We think it is clear from the Court of Appeals decision and the PUC's subsequent order that the Administrative Law Judge's recommended findings and the PUC's findings are no

longer binding. However, some parties have feared that the PUC might somehow attempt to reinstate them summarily. An EIS is an “action forcing” document. The only way that the new EIS can genuinely meet this action forcing requirement is if findings are fashioned afresh—de novo, once the new EIS is issued. The PUC has allowed the existing evidentiary record to be considered as appropriate, but it has not suggested, nor could it, that the vacated findings carry any ongoing weight. Those findings were issued without the availability of a compliant EIS, and any attempt to utilize them would unlawfully eviscerate the EIS requirement.

Dated: May 26, 2016

Respectfully Submitted,

RINKE NOONAN

/s/ Gerald W. Von Korff

Gerald W. Von Korff, #113232

P.O. Box 1497

St. Cloud, MN 56302-1497

320-251-6700

Email: jvonkorff@rinkenoonan.com

ATTORNEYS FOR CARLTON COUNTY
LAND STEWARDS

From: [Bobby Carroll](#)
To: [*COMM Pipeline Comments](#)
Subject: Scoping EIS comment for Sandpiper (13-473 & 13-474) and Line 3 Replacement (14-916 & 15-137)
Date: Friday, May 06, 2016 10:40:07 AM

Dear Ms. MacAlister,

we support

Sincerely,

Bobby carroll
8373 Highway 200
Lexington, TN 38351

From: [Rosanne Caughey](#)
To: [*COMM Pipeline Comments](#)
Subject: pipeline scoping
Date: Tuesday, May 24, 2016 10:48:56 AM

Jamie MacAlister and Department of Commerce staff,

The Sandpiper and Line 3 Replacement projects are both vital to the state of Minnesota. By moving forward with the development of these two projects, we are ensuring job creation, the safe distribution of petroleum, and a boost to our local economy.

As the President of the Crow Wing County Farm Bureau, I understand firsthand how vital these two projects are to our state. The agriculture industry would benefit greatly from these two projects, allowing for more agricultural products to be shipped on trains. We have been blessed on our farm to grow more grain than our animals can eat and would be very happy to be able to share the surplus with hungry people in an affordable manner.

A fair, timely, and final evaluation of these two projects has been delayed for far too long. In order to continue attracting business to our state, we need to maintain a timely and predictable regulatory process. I ask that the Department of Commerce adhere to the 280-day time limit to prepare the EIS in order to keep these projects on track.

The scope of the EIS should not be overly broad, nor should it be too narrow as to be inadequate.

Additionally, it should serve both the public and the private purpose of the two projects. This important balance must be met.

Thank you for the work you do for the state of Minnesota and thank you for your dedication in moving these projects forward.

Sincerely,
Rosanne Caughey
Crow Wing County Farm Bureau

Leroy and Janice Chief
14633 Forest Dr.
Park Rapids, MN 56470

5/12/16

Jamie MacAlister, Environmental Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101

Subject:

- Sandpiper PUC Docket Number PL-6668/CN 13-473 & PL-6668/PPL-13-474
- Line 3 PUC Docket Number PL-9/PPL-15-137

This letter is in regard to the pipeline operations planned over a part of our area that we live in. The subject of the proposed pipeline continues to crop up and we continue to be deeply concerned on the impact such an operation will have.

We have heard much that the pipelines are constructed, double welded, inspected and passed to be safe for the environment, yet we hear or read of spills in our water systems, lakes and rivers that cause damage and endanger the safety of people, animals, and plant life as we see it. Think of the damage to the Aquifer Systems. This damage extends to households, irrigation systems, animal and plant life.. These leaks, breaks are a reality and not "if" there is a leak/break but "when!" This area would be impacted for a long time if that were to happen.

Whatever agency that is selected to give the authority for permits for pipelines to be installed will have a tremendous responsibility. We are looking at the risk factor because of the sheer numbers of spills and leaks that invariably occur at some time during an operation as this. It does not even need to be oil, saltwater or other contaminants will cause immense damage for years to come and most certainly will cause a negative impact on our economy..

At present the designated agency needs to pay close attention to the concerned citizens' that bring the environmental impact to the forefront.

It is not the "haves and have not's" that need the attention, but the common sense that takes these concerns into consideration for the well being , health and safety for all. Thank You

Leroy Chief
Janice Chief

RECEIVED

MAY 17 2016

MAILROOM

From: [Amanda Christ](#)
To: [*COMM Pipeline Comments](#)
Subject: Sandpiper pipeline
Date: Thursday, May 26, 2016 9:43:50 AM

To whom it may concern,

The Sandpiper pipeline is proposed to enter northwest Minnesota, a state I call home. I hope that an honest and comprehensive EIS will provide greater analysis of all potential human and environmental impacts, and potential project alternatives. First, the pipeline is a support system to oil extraction by the method of hydraulic fracturing from the Bakken fields in North Dakota. Catastrophic climate change impacts are already occurring in Minnesota and globally. We should be focusing on curtailing such extraction instead of supporting it. Currently the oil and gas industry enjoys exclusions and exemptions to major federal environmental statutes intended to protect human health and the environment including: Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act; Safe Drinking Water Act, Clean Water Act, Clean Air Act, National Environmental Policy Act, Toxic Release Inventory under the Emergency Planning and Community Right-to-Know Act. As a result of this lack of oversight, human health, wildlife communities and the environment are being endangered. Until more thoughtful state regulations are enacted in North Dakota and until the petroleum industry at large is held accountable to remedy the negative impacts on human health and the environment, Minnesota should not put our human communities, land or water systems at risk of degradation. Fracking and its effects are taking place on public land including our National Grasslands. This act of private gain on public land, especially with such lack of regulation and oversight is abominable.

The proposed preferred Sandpiper route threatens waterways and wetlands in Polk County, and along the entire route. While I am concerned about the pipeline crossing the Red River of the North and Red Lake River watercourses, I am equally concerned about the route crossing the state's most famous river, the Mississippi. Both the Sandpiper and Line 3 replacement are proposed to cross this pristine headwaters area which is a valuable and cherished natural resource to residents of Minnesota and across the nation. The Sandpiper and Line 3 replacement pipelines would also cross Hay Creek, Shell River, Crow Wing River, just to name a few, and numerous sensitive wetland areas. The bounty of freshwater resources in northern Minnesota including wild rice beds, lakes and rivers and fisheries generate \$7.2 billion annually. This doesn't include the tourism industry which grosses \$11.9 billion in sales. These are real and permanent jobs. I am concerned that multiple pipelines will be allowed to follow this corridor if approved. These pipelines threaten not only pristine ecosystems, but also human communities.

The price of oil has dropped drastically from the start of the 'Bakken Boom'. Production of oil in the Bakken region has declined rapidly within the last year, resulting in a steep decline in new wells and infrastructure. Building a pipeline in Minnesota for a waning industry is not sustainable development. The current no build alternative that allows for road or railway transport will continue meeting the need to transport oil to refinery destinations. The Sandpiper will not eliminate or reduce the oil being transported by rail and truck. It will only allow more transportation to occur. Rail and truck transport allow flexibility to reach refineries and are the most feasible method given

the short term production expectations.

The impact on communities in North Dakota associated with the 'Bakken Boom' have experienced unsustainable population growth leading to human trafficking, crime, drug use and trafficking, lack of adequate and safe housing, shortage of police and emergency response workers, cost of living increases and many health problems. This industry does not support the health and wellbeing of our neighbors in North Dakota.

The only thing constant in the 'Bakken Boom' is change. Minnesota's natural resources should not be placed at permanent risk for the economic advancement of the North Dakota Pipeline Company and its desire to transport hazardous material. This project is not in the best interest of current or future citizens of Minnesota, only for those who expect to make money. Instead of muddling along on our current march toward energy independence by evermore domestic production it is time we redefine milestones and work toward a significant transition away from oil.

Respectfully,
Amanda Christ
Current resident of Savoy, Illinois and formerly of Mankato, Minnesota

From: [john cheryl grover](#)
To: [*COMM Pipeline Comments](#)
Subject: PL-6668/CN-13-473 and PPL-13-474; PL-9/CN-14-916 and PPL-15-137
Date: Wednesday, May 25, 2016 11:39:24 AM
Attachments: [Township Officer Letter of Support.docx](#)

Dear PUC Board:

Please find attached a letter of support that has been signed by the Clearwater County Township Association Officers.

At their April 26, 2016 a motion was made and passed as an Association to write a letter of support during this current scoping period.

Thank You.

Sincerely,

Cheryl Grover
Community Ambassador

Dear PUC Board,

We are Clearwater County Township Officers. The Enbridge Mainline System and the Sandpiper Pipeline and Line 3 Replacement Project routes in Northern Minnesota either run through our townships or through neighboring townships. We would like to share our support of these projects, and how important they are to our community, through this current public comment period.

Millions of dollars in local property tax revenue and thousands of jobs are at stake if these new pipelines do not get built. Our area businesses benefit greatly when projects like these are constructed. Sometimes these type of projects are the difference between businesses closing or staying open in the area. Local support for these projects is strong in our communities and we also want to show our support.

We ask you to continue to work as expediently as is permitted on these projects; as the delays in these projects will continue to affect jobs, tax and economic benefits from the Sandpiper and Line 3.

We appreciate that your board understands how important these projects are to our economy and the safety of all Minnesotans located along the oil train routes across our state. Every day of further delay is another day that more oil is unnecessarily crossing our state on trains instead of in pipelines where it belongs.

Thank you for the opportunity to express our concerns.

Sincerely,

Clearwater County Township Officers

Susan Thompson
Wilfred Halberg
Ben Sorom
Jim Peternell
Barb Anderson
Bear Creek Township Officers

Cindy Olson
Larry Olson
Clarence LaCroix
Jim Herman
Copley Township Board Members

Joel Wraa
Bob Wasson
Ken Brien
Bennie Erickson
Clover Township Board Members

Rodney Rhen
David Rongstad
Les Hinrichs,
Dudley Township Officers

Gary Thorson
Tim Shamp
Marilyn Shamp

Larry Lindgren
Mark Larson
Eddy Township Officers

Dennis Pemberton
Ron Knable
Tom Warren
Falk Township Officers

Terry Horn
Duane R. Petterson
Sheryll Petterson
Sheila R. Horn
Sharon Solien
Greenwood Township Officers

Gary Mathis
Arlys Mathis
Kipton Kalamaha
Kyle Kalamaha
Hangaard Township Officers

Jim Chesley
Stephanie Anderson
Bonnie R. Engen
Elwood Nordlund
Larry J. Djernes
Holst Township Officers

Gary Anderson
Kathryn Anderson
Keith DeMaris
Itasca Township Officers

David Engebretson
Mike Torgerson
Jim Aakre
Lori Larson
Leon Township Officers

Pam Janssen
Billy Lanners
Ken Christenson
Janet A. Olson
Harlan Strandlien
Moose Creek Township

Susan Sunderland
Lanny Mathison
Lillian Newland
Natalie Ronning
Kurt Sunderland
Minerva Township Officers

Al Rasmussen
Karla Netland
Paul Netland, **Nora Township Officers**

Don Friborg
Bruce Sly
Robert Dukek
Popple Township Officers

Richard J. Aos
Larry Peterson
Dennis Bergerson
Vernon Hamness
Paul Buer
Pine Lake Township Officers

Robert Lawrence
JoAnn Edevold
Owen Shegrud
Rice Township Officers

John Arneson
Amanda Haugen
Alfred Sather
Fred Halverson
Wesley Luggar
Shevlin Township Officers

Bruce Bjerke
Brooke Pond
Ray Reichert
Gordon Olson
Russ D. Lembke
Sinclair Township Officers

LeRoy Sundquist
Troy Horn
Louise Sundquist
Jason Bakke
Winsor Township Officers

Ingrid Kimball

From: john cheryl grover <jcgrover@gvtel.com>
Sent: Thursday, May 26, 2016 11:26 AM
To: *COMM_Pipeline Comments
Subject: PL-6668/CN-13-473 and PPL-13-474 (Sandpiper); PL-9/CN-14-916 and PPL-15-137 (Line 3)
Attachments: Clover Townboard & Citizens.pdf

Dear PUC Board,

Recently the Township Officers in Clearwater County submitted a Letter of Support for this current public comment period.

The citizens of Clover Township carried their support one step further by signing onto that same letter of support.

Please find a scanned copy of that letter attached. We did not want their voices not to be heard – but since they are NOT township officers – I did not want to include their names in the Township Officer Letter. But attached you will find their signatures so they can be heard too.

Best Regards,

Cheryl Grover
Community Ambassador

Dear PUC Board,

We are Clearwater County Township Officers. The Enbridge Mainline System and the Sandpiper Pipeline and Line 3 Replacement Project routes in Northern Minnesota either run through our townships or through neighboring townships. We would like to share our support of these projects and how important they are to our community through this current public comment period.

Millions of dollars in local property tax revenue and thousands of jobs are at stake if these new pipelines do not get built. Our area businesses benefit greatly when projects like these are constructed. Sometimes these type of projects are the difference between businesses closing or staying open in the area. Local support for these projects is strong in our communities and we also want to show our support.

We ask you to continue to work as expediently as is permitted on these projects; as the delays in these projects will continue to affect jobs, tax and economic benefits from the Sandpiper and Line 3.

We appreciate that your board understands how important these projects are to our economy and the safety of all Minnesotans located along the oil train routes across our state. Every day of further delay is another day that more oil is unnecessarily crossing our state on trains instead of in pipelines where it belongs.

Thank you for the opportunity to express our concerns.

Sincerely,

Clearwater County Township Officers

Sup CHAIR - Ken Baer
Sup - Eldon Baerwald
Sup - Bob Wasson
TREA - Benny Erickson
Ken Baer
Eldon Baerwald
Bob Wasson
Ben Erickson

CLERK Clearwater Township - Joel Wraa - Joel WRAA
Jerry L Wraa - Jerry L. Wraa
Lana J. Wraa - Lana Wraa
Cara Wraa
Herold Wraa
Jon Davis
Deone Swanson
Ordeon Swanson
Darrell Olson
Jon Davis
Deone Swanson
Ordeon Swanson

John Rickert

Fred Klason

Phyllis Torgerson

Aileen Erickson

Gordy Solberg

Donna Solberg

Leroy Lewis

Ingrid Kimball

From: drj@rural-access.com
Sent: Thursday, May 26, 2016 7:29 PM
To: *COMM_Pipeline Comments
Subject: Enbridge line 3

I am writing to support Enbridge line 3. We have owned land that they have lines passing through and this line will be there also. We have had nothing but positive experiences with this company. They are a valuable source of energy for the grid through out the United States. I am also a public official that deals with development through our County. Enbridge provides a valuable source of tax income for our area. We have attended several meetings with them to discuss the line, scope of project and outcomes for our country. I want to be in full support of a company that has a high priority on safety and look forward to them being a viable partner in the Energy field. Thanks for your consideration.

Joe Bouvette
Co. Commissioner Kittson County Minnesota

Please provide your contact information. This information and your comments will be publicly available.

Name: Bryan Connelly Phone: 612-802-9826

Street Address: 901 14th Ave NE

City: Minneapolis State: MN ZIP: 55434

Email: rconnelly@local563.org

My comments pertain to:

- Sandpiper Pipeline Project
- Line 3 Replacement Project
- Both Projects

I support these Pipelines they
produce good well paying Jobs for
people in the Area

Pipeline.Comments@state.mn.us

Subject: Pipeline Scoping

Dear Jamie MacAlister & Department of Commerce staff,

We are pleased that the scoping process for the Sandpiper and Line 3 Replacement projects is moving forward under the authority of the Department of Commerce and the Public Utilities Commission.

As the Executive Director of the Crookston Chamber of Commerce, I understand the impact these projects would have on safely shipping petroleum products underground and on growth of our local economy by creating thousands of jobs. Economies along the route will benefit as well as our state as a whole, and we are excited for the economic development and tax dollars these projects anticipate for our area.

As job creators and entities attempting to conduct business in the State of Minnesota rely on predictable and timely regulatory process, we ask that the Department of Commerce adhere to the 280-day time limit to prepare the EIS to keep these projects on track. In order to understand the impact of these projects, the EIS ought to be thorough but not overly broad or too narrow and should serve the public and private purpose of the two projects. This important balance must be met.

Thank you for the dedication to moving these projects forward in a timely manner and for all the work you do for our state.

Warmest regards,

A handwritten signature in black ink that reads "Amanda Lien". The signature is written in a cursive, flowing style.

Amanda Lien

Executive Director

Crookston Area Chamber of Commerce

From: healingsystems69@gmail.com on behalf of [Kristen Eide-Tollefson](#)
To: [MacAlister, Jamie \(COMM\)](#)
Cc: [*COMM Pipeline Comments](#)
Subject: CURE Comments on the Sandpiper EIS Draft Scope
Date: Thursday, May 26, 2016 8:00:21 AM
Attachments: [CURE Comment to Sandpiper Scoping Final 5-26.pdf](#)

Please find attached CURE's comments to the MN DOC - EERA for the

Draft Scoping Decision Document for the Sandpiper Pipeline Project
PUC Docket No. PL-6668/CN-13-473
PUC Docket No. PL-6668/PPL-13-474

This cover letter identifies these comments as CURE's, and briefly discusses our experience and interest in the proceeding. Please forward and file this cover letter with our comments. As PUC is established as RGU for this EIS, we would like to also e-file our comments. Though we assume that we can file public comments to these dockets, we will inquire further before filing.

CURE represents community members in the Mississippi River Hiawatha Valley in Southeast Minnesota. Anything that affects this principal watershed of the state, affects our 'backyards'. Our "Great River Road" tourist corridor, one of the busiest in the state, is directly connected to the tourist economies of Northern Minnesota, by Highway 61, which runs along the Mississippi River, to Itasca State Park, Bemidji, Grand Rapids, Aikin and Brainerd, through Duluth to the border. <http://www.fhwa.dot.gov/byways/byways/2279/directions>

CURE stands for Communities United for Responsible Energy. Its members have participated in PUC dockets and environmental review proceedings for over 20 years on a wide range of dockets that have to do with the topic of "responsible energy", primarily advocating for community, distributed resources and efficiency as paths to a 'responsible energy future'.

Our participation has included Integrated Resource Plans, transmission plans and projects (including numerous MAPP and Miso meetings); Smart grid and environmental cost dockets; nuclear waste and decommissioning proceedings including the 2009 certificate of need and EIS scoping for the Prairie Island ISFSI expansion. We are familiar with policy, law and agency procedures related to the evaluation of need and environmental review.

We applaud the collaborative approach for this EIS that is being taken by the agency team, under the direction of PUC as RGU, and the lead of DOC. This is a very important docket. We hope it will be, as promised, "the best EIS possible". It needs to be a landmark analysis. The time is past for "business as usual". We must choose our energy future now. CURE contends that building fossil fuel infrastructure for competitive market forces is not "need". The opportunity costs are too great.

Environmental Review and Certificate of Need are the tools we have to align state energy and environmental policy goals with economic decisions involving large energy infrastructure. We depend upon you to make the best use of them, to advance the public interest of the State of Minnesota and protect its natural resource commons.

Most respectfully yours,

Kristen Eide-Tollefson, Frontenac
Sigurd Anderson, Lake City

for CURE - Communities United for Responsible Energy
Goodhue County, Minnesota

2005 Session -- Chapter 97, Article 3, lays out the purpose for transfer from EQB to PUC and DOC, of responsibilities for Siting, Routing and Environmental Review.

Sec. 17. To ensure greater public participation in energy infrastructure approval proceedings and to better integrate and align state energy and environmental policy goals with economic decisions involving large energy infrastructure, all responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010 to 4410.7070, are transferred to the commissioner of the Department of Commerce. The power plant siting staff of the Environmental Quality Board are transferred to the Department of Commerce. The department's budget shall be adjusted to reflect the transfer.

The first purpose of this comment is to highlight the purposes and value of “public participation in energy infrastructure approval decisions”. Why is this important? First, because energy infrastructure, and specifically fossil fuel infrastructure, is the most impactful of all human infrastructure. Climate change is hard upon us, and every decision that is made to invest in energy infrastructure will affect the timeline and outcome of those impacts.

Second, because it is the role and responsibility of the public, of the citizens of the state, to articulate the values that guide public decision making. We are, in fact, dependent upon this public perspective, to ensure the accountability of public decision making to public values and priorities. It is the decision makers’ (RGU) responsibility to constructively engage, listen to, and provide channels for “meaningful participation” - defined as ‘having the potential to impact decision outcomes’.

Minnesotans have invested heavily for decades in the quality of Minnesota’s environment. Its character is part of our identity and everyday lives. We have passed a constitutional amendment and multiple packages of legislation to protect and enhance our air, waters, and resources; we dedicate LCMR funds to support our natural and cultural legacies. We fund state agencies, each of which is charged with some aspect of our (human and natural) resource commons. The public investments we make are expressions of public values and to the extent to which they provide public value, they are funded.

In light of these public values and mounting threats of climate change, we make two key requests:

- 1. Scope an inventory of public investments into the EIS:** Many millions of dollars have been invested in enhancing and protecting North Country region parks, trails, waters, wild rice lakes, trout streams etc. Local and regional economies – particularly the key tourism and recreation economies of Minnesota’s “North Country” – depend upon the quality and character of these natural resources. **It is imperative that this environmental impact statement identify public investments -- past, present and planned – in the resources that are potentially impacted by this**

project. Tax monies, federal, state or local that have been used to enhance, protect and repair these resources are eligible; federal, state and particularly agency and non-profit programs.

As complete an inventory as possible is necessary to establish an economic basis for evaluating the balance of costs and benefits. We have given deference for many years, to projects with major potential long term impacts, in exchange for a specific number of high paying and important but temporary construction jobs. It is time to develop a way to better assess claims of **costs and benefits** and allow us to better ‘account’ for the potential economic impact of associated risks to our environment.

**2. Please scope the following into the EIS consideration of climate change factors:
(Appendix B. 6E):**

- According to the testimony of Minnesota’s climate experts, Minnesota is the second most impacted state in the nation; our ecosystems are already challenged and stressed.
- The integrity of social and natural eco-systems significantly increases the chances of human and natural community sustainability and adaptation to climate change;
- Likewise, degradation of the eco-system increases stress and decreases the likelihood of successful adaptation;
- Culture plays an important role in climate change adaptation, particularly for Native American communities;
- The EIS scope should address the effects of both short (construction period) and cumulative, long term potential impacts and risks of pipeline operations – on ecosystem integrity, climate change, and associated stressors to natural and human communities.

Comments to the Scoping Draft Outline:

I. Project Need and Purpose and Alternatives Development

The Needs and Purpose (N&P) Statement of an EIS is central to the ability of environmental review to examine reasonable and prudent alternatives. EQB rule and guidance documents state that alternatives may be excluded if they do not meet “the underlying need for or purpose of the project”*. Section 3.1.2 of the Draft scope elaborates this application of the criteria, and case law upholds its use in the elimination of alternatives.

The present draft scope locates and defines the “underlying purpose of the project” at 3.1.2 under *Criteria for Evaluating Alternatives* included in an EIS. This is not the appropriate location for the Statement. The Preliminary Table of Contents at Appendix B., locates the “Project Purpose” at I.B.

As noted in footnote 14, the current language was adapted by DOC from the project proposer’s CON Notice Plan. It was used as the Statement of Purpose in the previous environmental review document where it drove, as is its purpose, the development and elimination of proposed alternatives to Enbridge’s route. The agency statement reads: *“The purpose of the project is to transport growing crude oil production from the Bakken Formation in North Dakota to the Superior, Wisconsin terminal and then connect to various other pipelines expanding access to refinery markets in the US Midwest and beyond”*.

Brevity is one of the goals of ER documents. However the complexity and controversy generated by this project, and the context of a multitude of existing and potential pipeline projects, requires distinction between the the “underlying” need (e.g transportation of oil from the Bakkan field to markets) and the applicant’s route specific statement of purpose. This is essential for any site alternatives to be considered under 3.2 and to identify and evaluate project, route, and system alternatives -- in addition to the specific project opportunity proposed by Enbridge -- that might fulfill the underlying purpose of the conveyance of oil from the Bakkan to markets.

Specific requests for Scoping document changes:

- Please change the Appendix B. Preliminary Table of Contents – I. B. “Project Purpose” to read: “Statement of Need and Purpose” (see discussion under III)
- Insert a placeholder in the Scope between 2.0 and 3.0. for the Statement of Need and Purpose.
- Identify data and analysis needed to evaluate and update the assumptions of the scoping document Statement of Purpose – specifically the assumption of ‘growing crude oil production’, and the need for ‘expanding access’ to markets.
- Please add the DAPL --Dakota Access Pipeline -- to analysis at 3.2 Alternative Sites. This project was recently (3-10-16) approved for routing through Iowa (see attached maps) <http://wgad.com/2016/03/10/bakken-pipeline-project-approved-in-iowa-branstad-respects-decision/>

The DAPL project FAQ Sheet (dated 11-05-15) at: <http://www.dakotaaccessfacts.com/> notes that the DAPL “ pipeline will transport approximately 450,000 barrels per day with a capacity as high as 570,000 barrels per day or more – which could represent approximately half of Bakken current (sic?) daily crude oil production. Shippers will be able to access multiple markets, including Midwest and East Coast markets as well as the Gulf Coast via the Nederland, Texas crude oil terminal facility of Sunoco Logistics Partners” In analysis for Alternative Sites 3.2 and need claims, PUC should review 2013-2014 FERC discussion of the Enbridge filings for Sandpiper (contentions of no-need) <https://www.ferc.gov/051514whats-new/comm-meet/2013/032113/G-5.pdf> and <https://www.ferc.gov/whats-new/comm-meet/2014//G-1.pdf>

II. Adapting the Statement of Need and Purpose (N&P):

Other guidance documents note that the Statement may need to be adapted as the EIS is developed (though not arbitrarily) in response to comments and subject to agency analysis, to ensure an appropriate fit between the Statement and alternatives analysis -- and compliance with the intent and purpose of the EIS. Care must be taken as to how the Statement is handled in the Scope, *because Minnesota rule (7850.2500 Subp. 2) prohibits changes to the final scoping document without approval of the Commissioner, and permission of the project proposer (4410.2100 Subp. 8).*

Specific Request for Scoping document: Therefore, if there is not concurrence among the EIS agency team as to wording of the Statement of Purpose for the Scope, an appropriately located placeholder should be established, stating that the Statement will be developed as part of the Draft EIS. The EIS draft is subject to public review and comment. This increases transparency and accountability which decreases the likelihood of delays caused by litigation. NEPA litigation frequently involves challenges to an agency’s determination of purpose and need. Finally, in terms of public process, the public will have a chance to review and comment on the decision factors if they are established in the EIS. This is full disclosure.

Because the current Statement of Purpose has repeatedly been raised as a point of contention, with claims that it has inappropriately constrained the development and qualification of alternatives, it would be helpful to note in the Scoping Document the role of the Statement of (Need and) Purpose in the evaluation of alternatives. And outline the information (data) requirements that may be necessary to develop a full and sufficient statement of need and purpose for the proposed project (see additional guidance references below).

III. Guidance on the N&P Statement

The need and purpose statement, as discussed in numerous state and federal guidance documents, is critical because it sets the stage for the development and evaluation of alternatives in the Record of Decision. NEPA scoping guidance provides a Summary of Purpose and Need (P&N): “A well crafted, succinct Purpose and Need Statement, drives the range of reasonable Alternatives that can be considered... As such, careful consideration should be given to be clear and accurate, but to allow sufficient flexibility to select Alternative courses of action, as reasonable and prudent. “

The EQB guidance document to RGUs for consultants provides similar advice: “In applying exclusion criteria, *the RGU must not be overly restrictive in defining the project’s purpose and need.* Occasionally, an RGU will claim desirable but nonessential elements as part of the project’s purpose or need, thus eliminating alternatives that should be included. In many cases, these are cost-related factors and, while important, they cannot overrule environmental considerations. At the same time, the RGU should not examine extraneous alternatives just to make an EIS more complicated”. The length of N&P Statements ranges from one paragraph to one page, to 15 pages in a major federal EIS.

IV. Need or Purpose - or - Need and Purpose?

Please note, that in the Sandpiper EIS it is appropriate and important to address both need and purpose for the projects. The MN Court of Appeals has determined that approval of the pipeline and its route would constitute a major governmental action that requires an environmental impact statement.

The ruling specified that the EIS must be completed before a decision is made on the certificate of need, to ensure that “decision makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it”. And further, that such action “seems particularly critical here because once a need is determined, the focus will inevitably turn to where the pipeline should go, as opposed to whether it should be built at all”.

Therefore it is essential that the PUC as RGU, its lead and key participating agencies (DOC, PCA and DNR) who have been charged with the preparation of the document, gather sufficient information to enable the purpose of and need for the project to be succinctly stated, so that it can be evaluated and reviewed by the public, other agencies, and interested parties. Please see guidance from other state and federal sources on development of this statement, referenced below.

V. Additional guidance needed?

Because case law upholds using the statement of need and purpose as a criterion for the elimination of alternatives, and the development and evaluation of alternatives is one of the prime purposes of the EIS – it may be necessary to consult other guidance documents to ensure that this statement meets the purposes of the environmental review document.

While EQB guidance documents are clear about the application of need and purpose as a criterion in elimination of alternatives, it is much less helpful in providing guidance for assembling and evaluating the adequacy of an N&P statement. Because this has also been a problem in NEPA, there have been a large number of suits, leading to the development of substantial case law and further guidance by state and federal agencies, an example of which is excerpted from the linked document below:

<https://www.greateratlantic.fisheries.noaa.gov/nepa/docs/nmfsneronepaguidancepurposeandneed.pdf>

***Summary:** “The purpose and need section should be prepared early-on by the manager for the project team, or it should be assembled under the direction of the manager. The preparer(s) should systematically review the needs-related information, and identify the purpose(s) based on both information reviews and input via interagency coordination and external scoping inputs. Consideration also should be given to effective means for communicating the needs and purposes [to the public]. Further, it should be recognized that the “purpose and need” section will need to be revised as the EIS is completed. The draft of the purpose and need section will evolve when the impact study is conducted. In fact, it should be considered as a work-in-progress until the draft EIS is released for agency and public review. The purpose and need section in the final EIS may need to be “fine-tuned” as a result of agency and public input.”*

Finally, the preparation of the description of the underlying need can be aided by the repeated consideration of the following series of questions (Lee, 1997, p.85):

- **“Why?”** For example: what is the basic problem or deficiency with the existing situation? Why is this a problem? ...What facts support the need? If the study has been underway for several years, what steps will be taken to make sure that the data underlying the purpose and need is still valid? How will the supporting information for the purpose and need be documented?
- **“Why here?”** For example: why is this problem or deficiency occurring here? Why not somewhere else? ...Is there a single purpose of the project, or does the project serve multiple purposes? If there are multiple purposes, are some more important than others? What are the true “drivers” of the project? How is the need for this project distinct from the need for other similar projects that are being proposed.
- **“Why now?”** For example: Why does the problem need to be addressed now (urgency)? Why not earlier or later?... If planning decisions are being used to support the purpose and need, how much time has passed since those decisions were made? Is there a need to re-consider or update those planning decisions? What data is available to evaluate the needs for the project area? If there are data gaps, how will those gaps be addressed?... What could happen if the problem were not addressed now? What has happened since it was not addressed earlier, and will happen if the situation is allowed to continue.

VI. **Section 3 - Alternatives Development (see note on 3.2 in section I above)**

Appendix B: Preliminary Table of Contents: There seems to be a discrepancy between this document and the required scope of alternatives to be considered listed in the Draft Scope at 3.1. Can this be assumed to be reconciled in the final scoping document? Where does System Alternatives analysis belong in the outline? Where will the Site Alternatives noted in 3.2 of the Draft Scope be developed in the EIS? Will existing Enbridge pipeline corridors that are being proposed for abandonment, be considered as an alternative route option? If so, why, if not, why not?

VII. **Section 4 - Environmental, Economic and Social Analysis.**

General considerations:

A. In the final Scoping document, please explain how the EIS will:

- Use "an interdisciplinary approach which will ensure the integrated use of the natural, environmental and social sciences" (4410.2200);
- "Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration...." (116D.03);
- "Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources" (116D.03) -- as this applies.

B. In the final scoping document please explain how the EIS will make recommendations, relative to the two strategies of avoidance and mitigation of potential environmental impacts.

- Establish avoidance as the standard for protection -- for high quality, rare or vulnerable resources -- for instance pristine or groundwater resources
- Ensure that the burden rests upon the proposer to demonstrate that there is no alternative to routes that create hazards and threats to resources identified in the EIS.

4.4.3 Consideration of local and regional economies – As residents of the Mississippi River Valley, we are pleased to see a commitment to analysis of tourism and recreational resources and economies. In this analysis it is critical to recognize the extent to which The health and sustainability of the culture, people, and natural resources of the region are interdependent.

Request for inclusion in Scope: A section on "existing conditions", describing the interdependence of the natural and socio-cultural ecosystems with the region's tourist and recreational economies -- situated between 1.2 and 1.3, or at 4.4 -- would aid in analysis and understanding of potential impacts, including but not limited to the following factors:

- Local and regional economies are based upon the quality of the natural and cultural resources, including some of Minnesota's most pristine and iconic waters, e.g. Source of the Mississippi.
- The resources that may be impacted by the project are central to the identity of "The Land of Sky Blue Waters"; and the identity of Minnesotans in all regions, and beyond.
- The environmental character of Northern Minnesota ("Up North") is its 'brand';
- The cultural heritage of Minnesota's tribes is central to the identity of the region,

4.4.4 Cultural Resources and Natural Resources 4.4.5.4. The Wild Rice lakes of the region are a unique resources that serves as an outstanding example of this interdependence. An interdisciplinary approach that incorporates natural, environmental and social sciences -- is critical to understanding the scope of potential impacts to these lakes for Native American people of the region. As well as to the resource. Wild Rice is an essential part of the tourist economy, character and experience and is valued by the state as part of Minnesota's identity. Minnesota designated **wild rice** as the official **state grain** in 1977. Wild Rice and the Ojibway People by Thomas Vennum, Minnesota Historical Society Press, is highly recommended as a resource for understanding the connection between these cultural and physical resources. <http://www.amazon.com/Wild-Ojibway-People-Thomas-Vennum/dp/087351226X>

Other - Environmental Concerns regarding Unused or Abandoned Pipelines in existing Enbridge corridors: Compared to natural gas, oil is subject to light-handed regulation –No Barriers to Entry: construction and operation of pipelines NOT regulated by FERC – No Barriers to Exit: termination and abandonment of pipelines NOT regulated by FERC. <http://www.ingaa.org/File.aspx?id=18255>

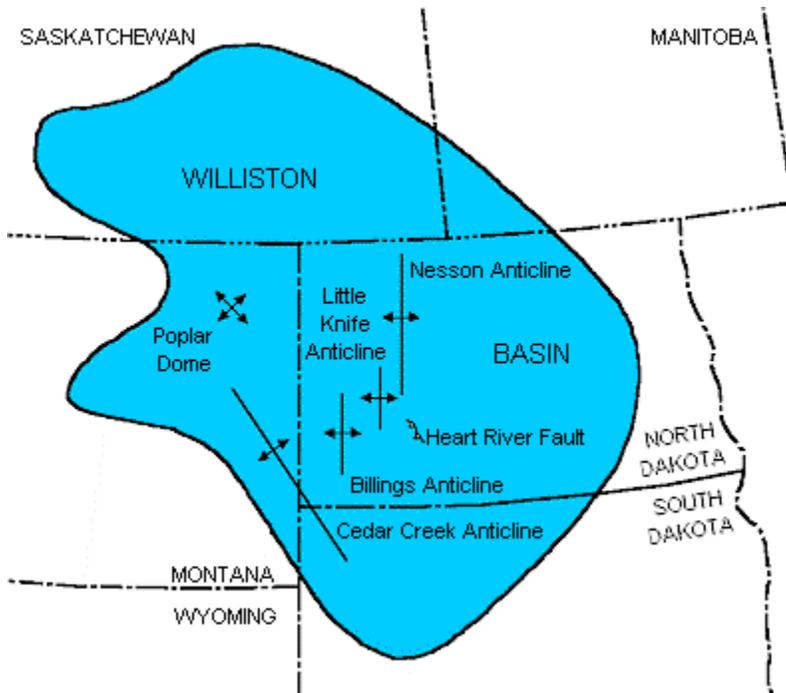
According to articles cited below, there are no abandonment guidelines, other than the federal requirements for disconnecting from active service. Therefore it appears that concerns regarding abandoned pipelines could be addressed in the EIS, as regulation is not preempted by the federal government if the lines are abandoned. The source cited below notes that “it is necessary to know as much information as possible about an abandoned pipeline because most pipeline companies will say any out of use line is only temporarily idled, even if has been out of use for 20 years”. The linked resources document liabilities that fall to landowners for abandoned lines.

Request for inclusion in the Scope: Request a mapped inventory of unused, idled and abandoned Enbridge lines in Minnesota to clarify their status, and showing those corridors which have been discussed in the CON and previous environmental review proceedings. Specify in the inventory which have been formally abandoned, and which are idled or unused and for how long they have been idled; if they have a history of repurposing, to indicate this; and what kinds of liquids have been conveyed or may be conveyed by the lines in the future. Please consider if this issue is appropriate for phased and connected actions and/or cumulative impacts. Please consider this issue for the Environmental Justice section, in response to concerns raised by residents of reservations with abandoned (?) lines.

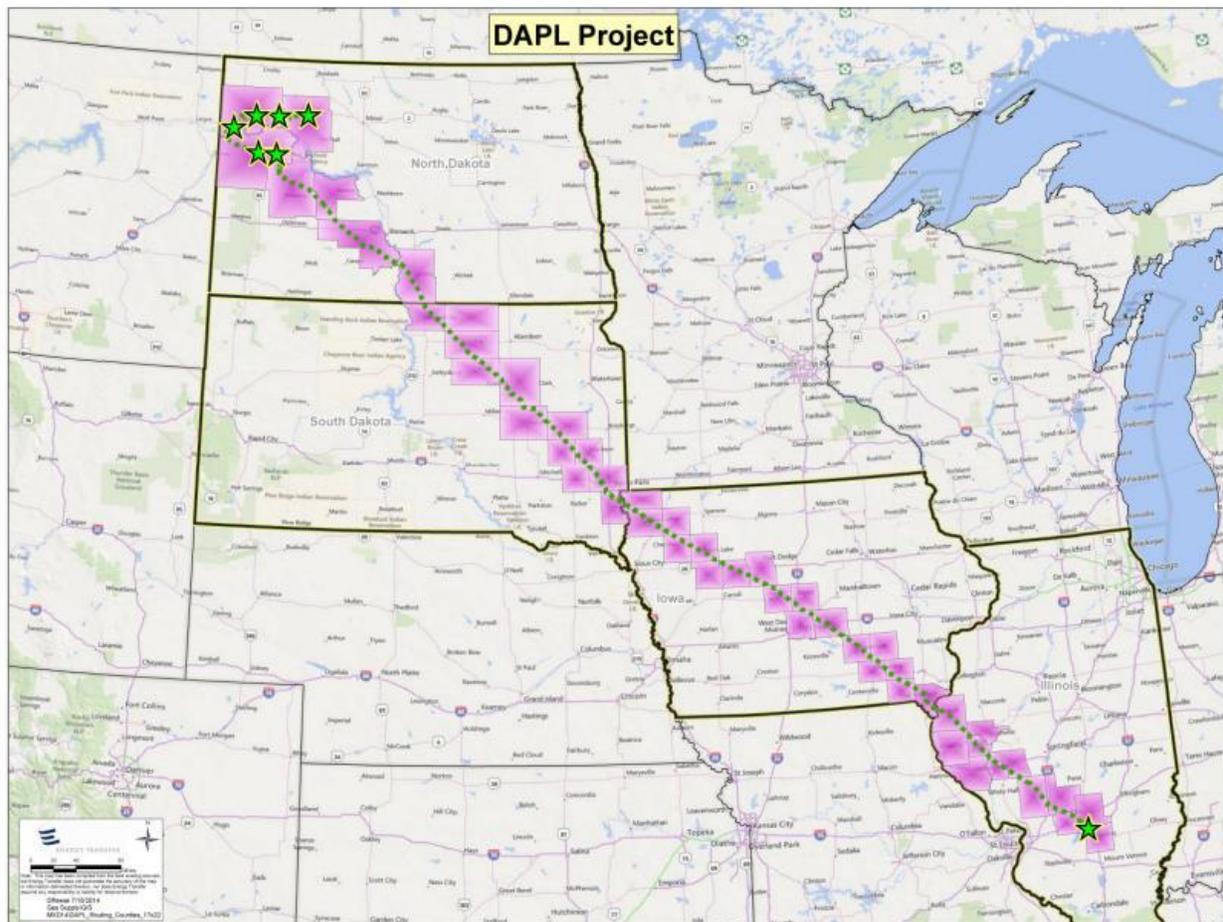
<http://www.pipelinelaw.com/2014/10/10/pipeline-abandonment-safety-supply-concerns-heart-recent-developments/>; <https://pgionline.com/2009/06/10/who-owns-abandoned-pipelines/>

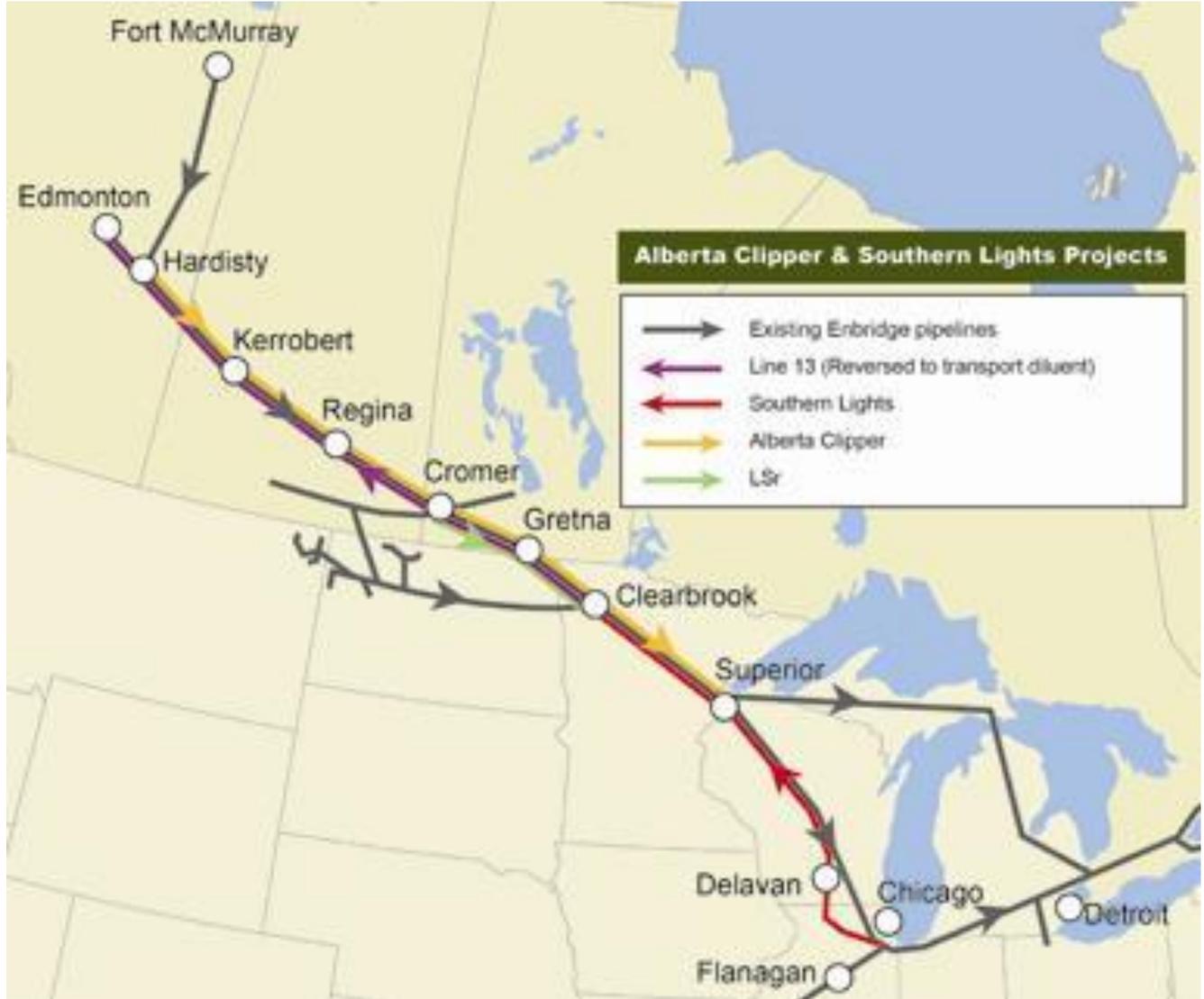
*The following are a number of factors a court or jurisdiction might consider in determining whether an easement or right-of-way (including the buried pipeline) has been canceled, extinguished and thus effectually reverted to the landowner:

1. Whether the line is merely idle or is completely abandoned.
2. The length of time the line has been idled or abandoned.
3. Whether the grantee company continues to maintain, test and /or patrol the line.
4. Whether the company continues to show the line and/or the easement as an asset in its records and/or continues to pay taxes on the line and/or the easement.
5. Whether there are other lines in the same easement which have not been idle or abandoned.
6. Whether the company has constructed or acquired new lines on other routes which make the idle or abandoned line and the easement in which it runs unnecessary.
7. Whether the company has idled or abandoned the facilities at either end of the line thereby making it unlikely that the line would be returned to service.
8. Whether it is cost prohibitive to return the line to service.
9. Whether the company has released or abandoned other segments of the easement thereby making it impossible to use the line or a replacement line at some future time.
10. The company plans for future use of the line or replacement line in the same easement or corridor (citation in link above)



The DAPL Project





RECENTLY COMPLETED ENBRIDGE LINES

Alberta Clipper is a 1,607-km (1,000-mile) crude oil pipeline that provides service between Hardisty, Alberta, and Superior, WI. Initial capacity is 450,000 barrels per day (bpd), with ultimate capacity of up to 800,000 bpd available.

The Southern Lights Project also included the LSr Project, a new 504-kilometre (315-mile) crude oil pipeline from Cromer, Manitoba to Clearbrook, MN. This line was brought into operation in February 2009, and the line was filled with oil shortly thereafter.

Oil's days are numbered as we
transition
to
Environmentally friendly
Renewable energy resources

Please know that the others and
I will be watching to insure
that the EIS for the sandpiper
pipeline + Line 3 replacement project
defer to MEPA law.

Mill
Dg

From: [Vicki Stute](#)
To: [*COMM Pipeline Comments](#)
Subject: Sandpiper Support
Date: Monday, May 23, 2016 3:38:06 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

Dear Jamie MacAlister and the Minnesota Department of Commerce,

As you know, the development of the Sandpiper Pipeline and Line 3 are major economic development projects for the State of Minnesota – not just regionally but for the entire state. Perhaps more importantly is the potential for bad precedent as the project (and also Line 3 replacement) continues down the path of constant regulatory delay.

As President of the Dakota County Regional Chamber of Commerce, I can testify that the benefits of these projects will be felt statewide – not simply along the route. Whether in direct jobs for people in our community or reduced competition for scarce rail capacity – the benefits are clear, obvious and should be no longer be delayed. We also believe that petroleum products should travel in the safest possible vessel – in this case, pipelines instead of the current, over-reliance on rail delivery. It's safer, cleaner and yields additional capacity for other products that cannot travel by pipeline.

A fair, timely, and final evaluation of this project has been delayed for far too long. Any entity attempting to do business in Minnesota relies on a predictable and timely regulatory process. I ask that the Department of Commerce adhere to the 280-day time limit to prepare the EIS to keep the project on track. The scope of the EIS is vital. It needs to serve the public and private purpose of the Sandpiper project. It should not be so narrow that it would be inadequate, but it should also not be too broad. This balance must be met.

The economic benefit, safety of shipping oil through pipelines, and public support for this project should emphasize the importance of seeing this process through, in a timely and effective manner.

Thank you for the work you do for the state of Minnesota and thank you for your dedication in moving this project forward.

Vicki Stute

Vicki Stute, President
Dakota County Regional Chamber of Commerce
3352 Sherman Court, Suite 201
Eagan, Minnesota 55121
D: 651.288-9201
P: 651.452.9872
F: 651.452.8978
vstute@dcrchamber.com



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From: [David Davis](#)
To: [*COMM Pipeline Comments](#)
Subject: Scoping EIS comment for Sandpiper (13-473 & 13-474) and Line 3 Replacement (14-916 & 15-137)
Date: Friday, May 06, 2016 9:10:07 AM

Dear Ms. MacAlister,

Dear Members of the Minnesota DOC; I am writing this letter in reference to the Sandpiper and Line 3 replacement projects. The economic impact that this project will spread throughout the communities of Minnesota, benefiting all. Your response within the 280 day time limit is important to keep project in schedule. There are no safer or economically way of transporting a product than a pipeline, that is proven. Further delays on this project has a revenue impact on the communities of Minnesota.

Sincerely,

David Davis
PO Box 2441
Hot Springs National Park, AR 71914
superdave79820@yahoo.com

From: [Tucky Dill](#)
To: [*COMM Pipeline Comments](#)
Subject: Attn: Jamie MacAlister
Date: Thursday, May 05, 2016 1:36:32 PM

Dear Jamie,

Please remove David's name off of your mailing list. Sadly, he passed away last August at Mayo.

My best to you and your project.

Tucky Dill

From: [Robert Doane](#)
To: [*COMM Pipeline Comments](#)
Subject: Scoping EIS comment for Sandpiper (13-473 & 13-474) and Line 3 Replacement (14-916 & 15-137)
Date: Tuesday, May 10, 2016 7:20:06 PM

Dear Ms. MacAlister,

Ms. Jamie MacAlister,

Benefits of following existing rights of way:

Sharing ROW will keep costs down at so many levels from negotiating ROW, Enviromental impact studies, Construction costs, Permitting, Maintenance costs after construction maintaining ROW. Sharing the same ROW will minimize all of these concerns and ultimately save and preserve other areas.

Sincerely,

Robert F. Doane
1103 Illinois St
Davis Junction, IL 61020
rdoane798@aol.com

International Union of Operating Engineers

LOCAL NO. 49, 49A, 49B, 49D, AND 49E
MINNESOTA • NORTH DAKOTA • SOUTH DAKOTA

CLAYTON J. JOHNSON, President
BRUCE A. STAHNKE, Vice President
TIM L. OLSON,
Recording-Corresponding Secretary
ERIC R. O'GARY, Treasurer



GLEN D. JOHNSON
Business Manager/Financial Secretary

Affiliated with the A.F.L. - C.I.O.

2829 Anthony Lane South, Minneapolis, MN 55418-3285
Phone (612) 788-9441 • Toll Free (866) 788-9441 • Fax (612) 788-1936

Jamie MacAllister
Minnesota Department of Commerce
85 7th Place East, #500
St Paul, MN 55101

May 25, 2016

Dear Ms. MacAllister:

Please consider this our formal written statement to be included in the Scoping EIS comment for Sandpiper (13-473 & 13-474) and Line 3 Replacement (14-916 & 15-137)

The International Union of Operators Local 49 represents 13,000 men and women working in the construction industry in Minnesota, North Dakota and South Dakota. Many of our members work on the construction and ongoing maintenance of pipeline projects throughout our state. We support pipeline projects that meet the strict standards of federal and state agencies and have proven benefit to communities across Minnesota.

The Department of Commerce has done its job and produced a comprehensive scoping document. In fact, we believe this is most complete and comprehensive environmental review of any pipeline project in Minnesota's history. Our critique is actually that this review could be too broad, as it contains studies of "system alternatives" that do not meet the need and will never be built. Many of these system alternatives run through densely populated and more developed areas.

The Department of Commerce recently held 12 meetings around the state. They heard from construction workers, local residents, mayors, school board members, and county commissioners that all support the Sandpiper and Line 3 projects. These real life, local voices should be heard and their desire for the economic benefits the pipelines will bring should not go ignored.

Our members have been waiting for years to get started on these projects. Many are leaving the state for pipeline jobs in other areas of the country. Minnesota has the highest labor and environmental standards in the United States and our members would rather be working close to home, spending their money in the local community, and participating in the lives of their

families. The more we delay these projects, the more hardship is put on the backs of working men and women.

We encourage the Department of Commerce to consider these impacts while they contemplate the scope of their EIS and look forward to moving this process forward.

Sincerely,

Julia Donnelly
Political Director
Operating Engineers Local 49

4075 West 51st Street #105
Edina, MN 55424
11 May 2016

Jamie MacAlister
Minnesota Department of Commerce
85-7th Place East Suite 500
Saint Paul, MN 55101

Dear Jamie MacAlister,

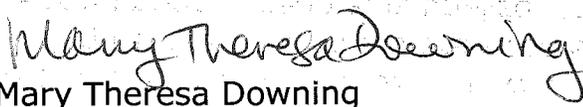
The first Environmental Impact Statement done for a pipeline in Minnesota should be a model for future statements. To make it truly useful, the EIS for the Sandpiper and Line 3 that Enbridge proposes to build should be broad enough to consider all options and be reliable enough to be dependable. To do less would not consider the actual impact of a pipeline on the environment.

An EIS for a new pipeline should consider many possible routes, not just those chosen by the applicant. The only route now under examination would cross an area of the state full of lakes as well as the headwaters of the Mississippi River. Risking that much of the state's recreational water, which provides jobs for a great number of people, is unwise, and risking the drinking water supply for Minneapolis is beyond foolhardy. In a rapidly warming, dryer world water may prove to be far more valuable than any other resource, regardless of corporate desires for immediate profit from oil. Allowing our water to be endangered without any way to reverse the damage would be completely irresponsible.

But an EIS is only as good as the data it contains. To ensure that figures are accurate they must be verified by a panel of independent experts. Such a panel would include engineers, hydrologists, soil scientists and economists who have no connection to Enbridge, its contractors or its suppliers. It should also include an individual who provided leadership on the second Keystone 1 EIS, as well as someone who worked on the recent National Academies of Science dilbit report.

The EIS should use Minnesota Environmental Protection Agency statutes as a guide, not ad hoc rules set up by the Department of Commerce or any other agency or group. And Minnesota's lead environmental agencies, the MPCA and the DNR, should be involved in preparing and supervising the EIS, a document that can ensure that we can protect our soil, our water and our citizens.

Sincerely yours,


Mary Theresa Downing

RECEIVED

MAY 17 2016

MAILROOM

Ingrid Kimball

From: Donovan Dyrdal <dyr-valley@hughes.net>
Sent: Thursday, May 26, 2016 12:13 PM
To: MacAlister, Jamie (COMM)
Subject: Line 3 Comments for submission
Attachments: 2016.05.26 Comments for Line 3.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Purple Category

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
Division of Energy Resources-Energy Facilities Permitting
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Jamie,

I have attached a copy of the exact letter that I am going to attempt to submit via the site that you gave me earlier.

I just want to make sure it is timely filed in case it does not go through on the site delegated for submissions.

Thank you,

Kathy Renwick

May 25, 2016

Donovan and Anna Dyrdal
Farmers/Landowners
12744 180th St NW
Thief River Falls, MN 56701

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
Division of Energy Resources-Energy Facilities Permitting
85 7th Place East, Suite 500
St. Paul, MN 55101-2198
E-mail: jamie.macalister@state.mn.us

Re: Public Comment: Line 3 Pipeline Replacement Project PUC Docket Numbers PL-9/CN-14-916 and PUC Routing Docket PL-9/PPL-15-137

The comments contained herein address two points regarding the Line 3 Pipeline Replacement Project.

1. First, comment will address the abandonment of the old Line 3 Pipeline.
2. Secondly the installation of the new Line 3R Pipeline.

The old easements (1950) grant a R.O.W. and easement for the purpose of laying, maintaining, operating, patrolling, altering, repairing, renewing and removing in whole or in part a pipe line for the transportation of crude, petroleum , its products and derivatives, whether liquid or gaseous, and/or mixtures thereof, together with the necessary fixtures, equipment and appurtenances, over, through, upon, under and across the described land situated in *insert property description,(intentionally left out by writer)*, together with the right to clear the right of way and remove or trim trees and brush, and remove other obstructions, for a sufficient distance along both sides of said pipe line so as to prevent damage or interference with its effective operation and patrol; and together with the right of ingress and egress to and from said right of way through and over said above described land for any and all purposes necessary to the exercise by Grantee of the rights herein granted.

The easement does not say that the Pipeline has a right to decommission and leave the abandoned pipeline in the ground indefinitely to deteriorate and contaminate the ground and its aquifers.

This project labeled as the Line 3 replacement project, is not a replacement project. The new Line 3R will be located in a new area with both an increase in the actual pipe size and increased bpd capacity. Replacement would call for the removal of the old existing Line 3 pipeline, which is not part of the plan. This will be an installation of an entirely new pipeline. Enbridge should remove the old abandoned Line 3 pipeline. If not in its entirety, at least in areas where the pipe is so shallow that it interferes with the right that is reserved in the original easement for the landowner to have the full use and enjoyment of said premises.

Line 3 is one of the three lines, running through our field drainage ditch, which are completely exposed. It acts as a dam, completely blocking or inhibiting the flow of water. Line 3 is one of the three shallow buried lines that we cannot properly farm over due to the lack of coverage. Enbridge will not allow their heavy equipment to traverse the oldest part of the right of way for fear of damaging them during maintenance digs. Yet the Dyrdals' livelihood is encumbered by this shallow pipe line by the fear of causing damage or worse personal injury by using their heavy agricultural equipment on this and the other shallowly buried pipe lines that run through their property.

One of the arguments that have been heard was that removing the pipeline would leave a huge void. This should not be the case; the pipeline company has an obligation to restore the area to its pre-construction condition.

Commission Rule: 7852.3600 PERMIT CONDITIONS FOR RIGHT-OF-WAY PREPARATION, CONSTRUCTION, CLEANUP, AND RESTORATION. § N. The permittee shall, to the extent possible, restore the area affected by the pipeline to the natural conditions that existed immediately before construction of the pipeline. Restoration must be compatible with the safe operation, maintenance, and inspection of the pipeline

Enbridge should remove the old Line 3 pipeline. Line 3 is one of the three completely exposed lines that run through our field drainage ditch. It acts as a dam, completely blocking or significantly inhibiting proper drainage of our fields. Line 3 is one of the three shallow buried lines that we cannot properly farm over due to the lack of coverage. Enbridge will not allow their heavy equipment to traverse the oldest part of the right of way for fear of damaging them. Yet Enbridge will hold the Dyrdals responsible for damage that occurs to these very shallow lines as they try to use the land for its intended agricultural purposes and thus their livelihood.

Possibly another solution would be to cap Line 3 before the beginning of the Dyrdals property and then immediately after their property. Then remove at least the segment of pipeline that runs through the Dyrdals' property. This does not address further deterioration and environmental concerns of land not owned or farmed by Dyrdals', but it is more preferable to the Dyrdals' than leaving the old deteriorating Line 3 in the ground.

Going back to the pre-pipeline era, to make the land productive for agricultural reasons, it was necessary to improve on what little natural drainage existed. Thus, in 1911 Judicial Ditch No. 25 (JD 25) was established and constructed in the Norden Township area. Lateral 5 to JD 25 passes through Section 20 flowing in a southerly direction along the N-S ¼ line for the entire mile and then turns westerly along the south line of Section 20 for 1320 feet at which point it turns south again through the section line township road and into Section 29 where it continues southerly along the 1/16 line on its way to the JD 25 outlet.

In the late 1970's, a determination of benefits was conducted on the JD 25 system in which a determination of benefits was conducted on the JD 25 system in which Lateral 5 was renamed Branch 3 of JD 25. The JD 25 ditch records show that all of Sections 20 and 29 were determined to benefit from JD 25, and particularly Branch 3 (formerly Lateral 5). Therefore, Sections 20 and 29 have been (since 1911) and are currently assessed to the JD 25 system.

Agricultural drainage practices generally consist of surface water removal with private open channel drainage ditches which outlet into legally established public open channel drainage ditches, to which they are assessed. Drainage benefits are considered an encumbrance to the property and go with the property when it is sold to another party. The new landowner thus acquires the vested drainage rights and responsibilities that go with the land. In this case, Dyrdal acquired the vested rights of drainage access to Branch 3, JD 25, and the responsibility to pay assessments to the ditch fund, when the property in Sections 20 and 29 were acquired.

Landowners assessed to legal drainage systems are responsible for constructing their own private ditches or tile drainage systems to effectuate their benefits and get their surface water drainage into the legal ditch system (i.e., Branch 3, JD 25 in this case). Because these landowners pay assessments for the construction, repair, and maintenance of the legal ditch system, they have a vested right to access the legal ditch with their private systems without hindrance or obstruction.

Since acquiring these properties in Sections 20 and 29, Dyrdal has developed a plan for their surface water drainage to access its rightful outlet into Branch 3, JD 25. Currently Enbridge's shallow pipelines are depriving the Dyrdals of the proper utilization of the ditch system that they are being assessed for. Removal of one of the shallow lines is a step in the right direction to correcting the inequitableness of this matter.

I hope that Enbridge and the MNPUC will consider all possibilities when addressing the old line; it can only be a benefit for the environment to remove the pipe all together.

INSTALLATION OF THE NEW LINE 3R

Points of compliance desired by the landowner that be taken into consideration for the installation of the new Line 3R Pipeline are:

1. A survey of pre and post-construction grade elevations, at intervals of 12 locations per every 100 feet in a grid like manner, on and off the proposed right of way.
2. Construction soil sampling and analysis of pre and post-construction soil types at least 24" deep, at intervals of 12 locations per every 100 feet in a grid like manner, on and off the proposed right of way.
3. Both pre and post-construction compaction tests both on and off the proposed right of way, at intervals of 12 locations per every 100 feet in a grid like manner, on and off the proposed right of way. Decompact all travel lanes and turn around areas specifically to meet or exceed areas adjacent to the ROW.
4. Enbridge shall bring in quality topsoil to meet or exceed preconstruction/maintenance digs to alleviate subsidence and lost top soil and soil mixing.
5. A comprehensive preventive plan agreed on in advance of the start of all construction, to deal with any/all noxious weed issues that may occur due to the length of the construction process and restoration. Enbridge states in its project Summary, that the restoration process can take longer than 1 year due to weather conditions and other environmental impacts, that would allow a seed bed of noxious weeds to take a strong foot hold in that time frame, on prime agricultural land.
6. All litter from Enbridge employees and/or its subcontractors is removed on a daily basis.
7. Remove all waste and scrap from construction daily and completely by the end of the construction period.

Professional independent contractors agreed upon by both Enbridge and the Dyrdals should conduct all measurements, testing, and inspections. We do not want to go through another six plus years, as we did with the LSr and Alberta Clipper Projects, of trying to get our land adequately restored to preconstruction status. Enbridge needs to restore land to the pre-construction status as a result from the construction of the new Line 3R if it is to be laid.

One other point I would like to bring to attention regarding the installation of the new Line 3R pipeline and removal of deteriorating old lines, is my concerns for the aquifers. This pipeline R.O.W. corridor cuts thru the sands and gravel of the beach ridges to the East and West of our owned land and has already affected the natural water veins in our area, these areas are also at very high-risk classifications for polluting aquifers in the event of a pipeline release.

Sincerely,



Donovan Dyrdal

From: [Trudy Dunham](#)
To: [*COMM Pipeline Comments](#)
Subject: EIS Scoping Comments: Sandpiper and Line 3
Date: Wednesday, May 25, 2016 10:56:35 PM
Attachments: [EIS-Scope-Testimony-WCfFG-5-9-16.pdf](#)

See attached.

Trudy Dunham
Women's Congress for Future Generations
St. Paul, MN.

Testimony from The Women's Congress for Future Generations

moreinfo@futurefirst.us

Trudy Dunham

May 9, 2016

A significant issue relevant to the proposed pipeline is the impact the pipeline will have on future generations. The EIS should explicitly address the rights of future generations, the Public Trust Doctrine, Environmental Justice, the Precautionary Principle, and Climate Change.

The MN legislature has declared that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state. That each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. That it is the policy of the legislature to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. (MN Statute 116B.01)

In order to protect these rights of both present and future generations, the government must honor the Public Trust Doctrine. The Public Trust Doctrine has two parts: that community members, all of us, have an equal right to access clean air and water, and productive land where it is safe to grow food and build homes. The Government's main responsibility is to hold these natural resources (the Commons) in trust for our use, to protect them from harm and exploitation, and pass them on unimpaired to future generations. The EIS should demonstrate that the Public Trust Doctrine has been met.

The argument that portions of our state with lower population are of "low consequence" and thus can be held to lower standards of pipeline management, maintenance, monitoring and emergency response plans is clearly a violation of the Public Trust Doctrine that states all community members have an equal right to clean air, clean water, and productive land. It is also a violation of Environmental Justice Framework that the MN Pollution Control Agency adopted in December 2015. The EIS should ensure that standards for management, maintenance, monitoring and emergency response plans are consistent with the Public Trust Doctrine and the Environmental Justice Framework.

What are the cumulative impacts of this pipeline on the health and well-being of the community and its residents? We know that pipelines corrode. They leak and they rupture. There have been many examples, including Kalamazoo River and Yellowstone River. We know that significant spillage can occur before a leaking pipeline is discovered and repaired. Where the oil goes depends on whether it is a surface or underground spill; on how long before the spill is discovered; and on geology: type of soil, rock, aquifers and rivers. We know that surface oil spills and spills in water travel further, and are more likely to form vapor and become airborne, or to be dissolved in water. Exposure via chronic inhalation and direct skin contact are known to have negative health impacts. Crude oil contains a variety of toxic chemicals,

including Benzene, a known human carcinogen. Breathing fumes from crude oil can cause respiratory problems and other health problems. Crude oil is a known teratogen; it can cause birth defects, changes in fetal development, and decreased fetal survival. Humans aren't the only one negatively impacted by oil spills: the physical properties of oil interfere with the normal functioning of organisms. For example, oil-coated birds lose their capacity to float, stay warm and fly.

We know that crude oil is not readily biodegradable, and that spills are difficult to clean up. We don't know all the negative health effects of exposure to the toxins in oil production and spills. Even short term exposure may prove to be catastrophic, and the consequences may take years to show up in our society. The effects will likely be cumulative. We recognize that toxins will likely interact with other toxins in our environment, causing complex health and environmental problems. In the face of harm and scientific uncertainty, we must take action to prevent harm. We must act ethically to protect future generations rather than waiting until all the evidence is complete to ban a risky activity. The Precautionary Principle states "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically." Let us heed the warnings of prior oil spills and disasters, and the impact they have on human health and the environment. The EIS should comply with the Precautionary Principle, to deny or not allow an action when it threatens harm to humans or our environment. Monitoring for potential harm should be an essential ongoing activity, with reports to the public, the ability of the public to withdraw consent and thus end harmful practices, and to require the polluter to pay for all clean-up and damages.

In order to protect these rights of present and future generations to clean natural resources, it is our (the present generation's) responsibility to slow down and to limit climate change. An initial consideration should be the need for the massive and ongoing amount of oil projected to flow through the pipeline. In this time of dire climate change, when we should all be working to minimize global warming and greenhouse gas emissions, when we have pledged that our nation and our state will meet its obligations under the Paris accord, we see no need to pipe more oil. The oil should remain in the ground. Before any infrastructure is approved or developed to transport oil via pipeline or other means through Minnesota, the EIS should demonstrate that there is 1) an essential, long-term, urgent need within MN and the USA for energy that 2) cannot be reasonably met by cleaner and more efficient energy sources. [Consideration should also be given to research on new renewable, clean energies and technologies.]

In closing, the EIS should consider the rights and the needs of future generations to clean air, water, and energy, to productive land for growing food and living. The Public Trust Doctrine, Environmental Justice Framework, Precautionary Principle and whether oil is essential to meet the long-term energy needs of the USA, and the availability of cleaner, more efficient energy sources, including those in research development.

Ingrid Kimball

From: polly edington <edingtonpolly@hotmail.com>
Sent: Wednesday, May 25, 2016 6:46 AM
To: MacAlister, Jamie (COMM)
Subject: pipeline comment

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Purple Category

Hi Jamie!

I've attended one of your meetings on Sandpiper and Line 3...I'm still not convinced that the best thing to do with Line 3 is to abandon it...may be best cost effective for you but not for those that live near it...

Thanks for listening,
Polly Edington
29627 MacTavish Dr.
GR MN 55744

218-999-9384

PS: I just tried sending this to the pipeline comment email address...it bounced back so called the 800 number the lady graciously gave me your email address!

From: bobiniowa538@aol.com
To: [*COMM Pipeline Comments](#)
Subject: Sandpiper pipeline
Date: Wednesday, April 27, 2016 5:06:23 AM

The current route is a poor choice. Pristine lakes and aquifer with very permeable sand above it sets us up for an environmental disaster when the inevitable spill occurs. Please change route to a safer choice. Also with much of tar sand oil production shut down there is no need for this pipeline.

Robert Eggers
13065 Breezy Pine Drive
Park Rapids, Mn

Speaker Registration

Complete to add your name to the speaker's list for tonight's public information meeting.

PLEASE PRINT CLEARLY

Name haws Elyse
First Last

Did you sign in at the door? If not, please add your address here:

Address 1924 S. Lake Irving Drive S 100

City Beaverton State OR zip 97005
offered guidance
Embroidery shop that we were of- distanced
the sail on 6th Pine (was the 3rd before)
discontinued, please refer to

Jamie MacAlister
87 7th Place East, Suite 500
St. Paul, MN 55105

May 5, 2016

To whom it May Concern:

I am writing in opposition to the proposed Sandpiper Project in which the pipeline will pass though Crow Wing County where I reside.

While the potential for rail accidents is horrific, it would affect far fewer people than a pipeline spill. A spill affects not only humans but plants and animals as well. We do not need oil coming out of our water taps.

It is always the poor who suffer the most when any disaster occurs including an oil spill. What assurance would we have that a spill would be detected early and corrected promptly? Who will pay for the damage?

Big oil is only of several industries that promote the destruction of the earth's resources. One only needs to read what is happening in Latin and South America to see the devastation caused by oil and gas companies and weak governmental control.

Unless closely regulated, the powers-that-be will continue unabated with their greed. We do not need this pipeline in Minnesota or anywhere else.

Sincerely,



Lorraine Ehrich
13806 Memorywood Dr.
Baxter, MN 56425

RECEIVED

MAY 10 2016

MAILROOM

Ingrid Kimball

From: healingsystems69@gmail.com on behalf of Kristen Eide-Tollefson
<healingsystems@earthlink.net>
Sent: Thursday, May 26, 2016 6:00 AM
To: MacAlister, Jamie (COMM)
Cc: *COMM_Pipeline Comments
Subject: CURE Comments on the Sandpiper EIS Draft Scope
Attachments: CURE Comment to Sandpiper Scoping Final 5-26.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Purple Category

Please find attached CURE's comments to the MN DOC - EERA for the

Draft Scoping Decision Document for the Sandpiper Pipeline Project
PUC Docket No. PL-6668/CN-13-473
PUC Docket No. PL-6668/PPL-13-474

This cover letter identifies these comments as CURE's, and briefly discusses our experience and interest in the proceeding. Please forward and file this cover letter with our comments. As PUC is established as RGU for this EIS, we would like to also e-file our comments. Though we assume that we can file public comments to these dockets, we will inquire further before filing.

CURE represents community members in the Mississippi River Hiawatha Valley in Southeast Minnesota. Anything that affects this principal watershed of the state, affects our 'backyards'. Our "Great River Road" tourist corridor, one of the busiest in the state, is directly connected to the tourist economies of Northern Minnesota, by Highway 61, which runs along the Mississippi River, to Itasca State Park, Bemidji, Grand Rapids, Aikin and Brainerd, through Duluth to the border. <http://www.fhwa.dot.gov/byways/byways/2279/directions>

CURE stands for Communities United for Responsible Energy. Its members have participated in PUC dockets and environmental review proceedings for over 20 years on a wide range of dockets that have to do with the topic of "responsible energy", primarily advocating for community, distributed resources and efficiency as paths to a 'responsible energy future'.

Our participation has included Integrated Resource Plans, transmission plans and projects (including numerous MAPP and Miso meetings); Smart grid and environmental cost dockets; nuclear waste and decommissioning proceedings including the 2009 certificate of need and EIS scoping for the Prairie Island ISFSI expansion. We are familiar with policy, law and agency procedures related to the evaluation of need and environmental review.

We applaud the collaborative approach for this EIS that is being taken by the agency team, under the direction of PUC as RGU, and the lead of DOC. This is a very important docket. We hope it will be, as promised, "the best EIS possible". It needs to be a landmark analysis. The time is past for "business as usual". We must choose our energy future now. CURE contends that building fossil fuel infrastructure for competitive market forces is not "need". The opportunity costs are too great.

Environmental Review and Certificate of Need are the tools we have to align state energy and environmental policy goals with economic decisions involving large energy infrastructure. We depend upon you to make the best use of them, to advance the public interest of the State of Minnesota and protect its natural resource commons.

Most respectfully yours,

Kristen Eide-Tollefson, Frontenac
Sigurd Anderson, Lake City

for CURE - Communities United for Responsible Energy
Goodhue County, Minnesota

2005 Session -- Chapter 97, Article 3, lays out the purpose for transfer from EQB to PUC and DOC, of responsibilities for Siting, Routing and Environmental Review.

Sec. 17. To ensure greater public participation in energy infrastructure approval proceedings and to better integrate and align state energy and environmental policy goals with economic decisions involving large energy infrastructure, all responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010 to 4410.7070, are transferred to the commissioner of the Department of Commerce. The power plant siting staff of the Environmental Quality Board are transferred to the Department of Commerce. The department's budget shall be adjusted to reflect the transfer.

The first purpose of this comment is to highlight the purposes and value of “public participation in energy infrastructure approval decisions”. Why is this important? First, because energy infrastructure, and specifically fossil fuel infrastructure, is the most impactful of all human infrastructure. Climate change is hard upon us, and every decision that is made to invest in energy infrastructure will affect the timeline and outcome of those impacts.

Second, because it is the role and responsibility of the public, of the citizens of the state, to articulate the values that guide public decision making. We are, in fact, dependent upon this public perspective, to ensure the accountability of public decision making to public values and priorities. It is the decision makers’ (RGU) responsibility to constructively engage, listen to, and provide channels for “meaningful participation” - defined as ‘having the potential to impact decision outcomes’.

Minnesotans have invested heavily for decades in the quality of Minnesota’s environment. Its character is part of our identity and everyday lives. We have passed a constitutional amendment and multiple packages of legislation to protect and enhance our air, waters, and resources; we dedicate LCMR funds to support our natural and cultural legacies. We fund state agencies, each of which is charged with some aspect of our (human and natural) resource commons. The public investments we make are expressions of public values and to the extent to which they provide public value, they are funded.

In light of these public values and mounting threats of climate change, we make two key requests:

- 1. Scope an inventory of public investments into the EIS:** Many millions of dollars have been invested in enhancing and protecting North Country region parks, trails, waters, wild rice lakes, trout streams etc. Local and regional economies – particularly the key tourism and recreation economies of Minnesota’s “North Country” – depend upon the quality and character of these natural resources. **It is imperative that this environmental impact statement identify public investments -- past, present and planned – in the resources that are potentially impacted by this**

project. Tax monies, federal, state or local that have been used to enhance, protect and repair these resources are eligible; federal, state and particularly agency and non-profit programs.

As complete an inventory as possible is necessary to establish an economic basis for evaluating the balance of costs and benefits. We have given deference for many years, to projects with major potential long term impacts, in exchange for a specific number of high paying and important but temporary construction jobs. It is time to develop a way to better assess claims of **costs and benefits** and allow us to better ‘account’ for the potential economic impact of associated risks to our environment.

**2. Please scope the following into the EIS consideration of climate change factors:
(Appendix B. 6E):**

- According to the testimony of Minnesota’s climate experts, Minnesota is the second most impacted state in the nation; our ecosystems are already challenged and stressed.
- The integrity of social and natural eco-systems significantly increases the chances of human and natural community sustainability and adaptation to climate change;
- Likewise, degradation of the eco-system increases stress and decreases the likelihood of successful adaptation;
- Culture plays an important role in climate change adaptation, particularly for Native American communities;
- The EIS scope should address the effects of both short (construction period) and cumulative, long term potential impacts and risks of pipeline operations – on ecosystem integrity, climate change, and associated stressors to natural and human communities.

Comments to the Scoping Draft Outline:

I. Project Need and Purpose and Alternatives Development

The Needs and Purpose (N&P) Statement of an EIS is central to the ability of environmental review to examine reasonable and prudent alternatives. EQB rule and guidance documents state that alternatives may be excluded if they do not meet “the underlying need for or purpose of the project”*. Section 3.1.2 of the Draft scope elaborates this application of the criteria, and case law upholds its use in the elimination of alternatives.

The present draft scope locates and defines the “underlying purpose of the project” at 3.1.2 under *Criteria for Evaluating Alternatives* included in an EIS. This is not the appropriate location for the Statement. The Preliminary Table of Contents at Appendix B., locates the “Project Purpose” at I.B.

As noted in footnote 14, the current language was adapted by DOC from the project proposer’s CON Notice Plan. It was used as the Statement of Purpose in the previous environmental review document where it drove, as is its purpose, the development and elimination of proposed alternatives to Enbridge’s route. The agency statement reads: *“The purpose of the project is to transport growing crude oil production from the Bakken Formation in North Dakota to the Superior, Wisconsin terminal and then connect to various other pipelines expanding access to refinery markets in the US Midwest and beyond”*.

Brevity is one of the goals of ER documents. However the complexity and controversy generated by this project, and the context of a multitude of existing and potential pipeline projects, requires distinction between the the “underlying” need (e.g transportation of oil from the Bakkan field to markets) and the applicant’s route specific statement of purpose. This is essential for any site alternatives to be considered under 3.2 and to identify and evaluate project, route, and system alternatives -- in addition to the specific project opportunity proposed by Enbridge -- that might fulfill the underlying purpose of the conveyance of oil from the Bakkan to markets.

Specific requests for Scoping document changes:

- Please change the Appendix B. Preliminary Table of Contents – I. B. “Project Purpose” to read: “Statement of Need and Purpose” (see discussion under III)
- Insert a placeholder in the Scope between 2.0 and 3.0. for the Statement of Need and Purpose.
- Identify data and analysis needed to evaluate and update the assumptions of the scoping document Statement of Purpose – specifically the assumption of ‘growing crude oil production’, and the need for ‘expanding access’ to markets.
- Please add the DAPL --Dakota Access Pipeline -- to analysis at 3.2 Alternative Sites. This project was recently (3-10-16) approved for routing through Iowa (see attached maps) <http://wgad.com/2016/03/10/bakken-pipeline-project-approved-in-iowa-branstad-respects-decision/>

The DAPL project FAQ Sheet (dated 11-05-15) at: <http://www.dakotaaccessfacts.com/> notes that the DAPL “ pipeline will transport approximately 450,000 barrels per day with a capacity as high as 570,000 barrels per day or more – which could represent approximately half of Bakken current (sic?) daily crude oil production. Shippers will be able to access multiple markets, including Midwest and East Coast markets as well as the Gulf Coast via the Nederland, Texas crude oil terminal facility of Sunoco Logistics Partners” In analysis for Alternative Sites 3.2 and need claims, PUC should review 2013-2014 FERC discussion of the Enbridge filings for Sandpiper (contentions of no-need) <https://www.ferc.gov/051514whats-new/comm-meet/2013/032113/G-5.pdf> and <https://www.ferc.gov/whats-new/comm-meet/2014//G-1.pdf>

II. Adapting the Statement of Need and Purpose (N&P):

Other guidance documents note that the Statement may need to be adapted as the EIS is developed (though not arbitrarily) in response to comments and subject to agency analysis, to ensure an appropriate fit between the Statement and alternatives analysis -- and compliance with the intent and purpose of the EIS. Care must be taken as to how the Statement is handled in the Scope, *because Minnesota rule (7850.2500 Subp. 2) prohibits changes to the final scoping document without approval of the Commissioner, and permission of the project proposer (4410.2100 Subp. 8).*

Specific Request for Scoping document: Therefore, if there is not concurrence among the EIS agency team as to wording of the Statement of Purpose for the Scope, an appropriately located placeholder should be established, stating that the Statement will be developed as part of the Draft EIS. The EIS draft is subject to public review and comment. This increases transparency and accountability which decreases the likelihood of delays caused by litigation. NEPA litigation frequently involves challenges to an agency’s determination of purpose and need. Finally, in terms of public process, the public will have a chance to review and comment on the decision factors if they are established in the EIS. This is full disclosure.

Because the current Statement of Purpose has repeatedly been raised as a point of contention, with claims that it has inappropriately constrained the development and qualification of alternatives, it would be helpful to note in the Scoping Document the role of the Statement of (Need and) Purpose in the evaluation of alternatives. And outline the information (data) requirements that may be necessary to develop a full and sufficient statement of need and purpose for the proposed project (see additional guidance references below).

III. Guidance on the N&P Statement

The need and purpose statement, as discussed in numerous state and federal guidance documents, is critical because it sets the stage for the development and evaluation of alternatives in the Record of Decision. NEPA scoping guidance provides a Summary of Purpose and Need (P&N): “A well crafted, succinct Purpose and Need Statement, drives the range of reasonable Alternatives that can be considered... As such, careful consideration should be given to be clear and accurate, but to allow sufficient flexibility to select Alternative courses of action, as reasonable and prudent. “

The EQB guidance document to RGUs for consultants provides similar advice: “In applying exclusion criteria, *the RGU must not be overly restrictive in defining the project’s purpose and need.* Occasionally, an RGU will claim desirable but nonessential elements as part of the project’s purpose or need, thus eliminating alternatives that should be included. In many cases, these are cost-related factors and, while important, they cannot overrule environmental considerations. At the same time, the RGU should not examine extraneous alternatives just to make an EIS more complicated”. The length of N&P Statements ranges from one paragraph to one page, to 15 pages in a major federal EIS.

IV. Need or Purpose - or - Need and Purpose?

Please note, that in the Sandpiper EIS it is appropriate and important to address both need and purpose for the projects. The MN Court of Appeals has determined that approval of the pipeline and its route would constitute a major governmental action that requires an environmental impact statement.

The ruling specified that the EIS must be completed before a decision is made on the certificate of need, to ensure that “decision makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it”. And further, that such action “seems particularly critical here because once a need is determined, the focus will inevitably turn to where the pipeline should go, as opposed to whether it should be built at all”.

Therefore it is essential that the PUC as RGU, its lead and key participating agencies (DOC, PCA and DNR) who have been charged with the preparation of the document, gather sufficient information to enable the purpose of and need for the project to be succinctly stated, so that it can be evaluated and reviewed by the public, other agencies, and interested parties. Please see guidance from other state and federal sources on development of this statement, referenced below.

V. Additional guidance needed?

Because case law upholds using the statement of need and purpose as a criterion for the elimination of alternatives, and the development and evaluation of alternatives is one of the prime purposes of the EIS – it may be necessary to consult other guidance documents to ensure that this statement meets the purposes of the environmental review document.

While EQB guidance documents are clear about the application of need and purpose as a criterion in elimination of alternatives, it is much less helpful in providing guidance for assembling and evaluating the adequacy of an N&P statement. Because this has also been a problem in NEPA, there have been a large number of suits, leading to the development of substantial case law and further guidance by state and federal agencies, an example of which is excerpted from the linked document below:

<https://www.greateratlantic.fisheries.noaa.gov/nepa/docs/nmfsneronepaguidancepurposeandneed.pdf>

***Summary:** “The purpose and need section should be prepared early-on by the manager for the project team, or it should be assembled under the direction of the manager. The preparer(s) should systematically review the needs-related information, and identify the purpose(s) based on both information reviews and input via interagency coordination and external scoping inputs. Consideration also should be given to effective means for communicating the needs and purposes [to the public]. Further, it should be recognized that the “purpose and need” section will need to be revised as the EIS is completed. The draft of the purpose and need section will evolve when the impact study is conducted. In fact, it should be considered as a work-in-progress until the draft EIS is released for agency and public review. The purpose and need section in the final EIS may need to be “fine-tuned” as a result of agency and public input.”*

Finally, the preparation of the description of the underlying need can be aided by the repeated consideration of the following series of questions (Lee, 1997, p.85):

- **“Why?”** For example: what is the basic problem or deficiency with the existing situation? Why is this a problem? ...What facts support the need? If the study has been underway for several years, what steps will be taken to make sure that the data underlying the purpose and need is still valid? How will the supporting information for the purpose and need be documented?
- **“Why here?”** For example: why is this problem or deficiency occurring here? Why not somewhere else? ...Is there a single purpose of the project, or does the project serve multiple purposes? If there are multiple purposes, are some more important than others? What are the true “drivers” of the project? How is the need for this project distinct from the need for other similar projects that are being proposed.
- **“Why now?”** For example: Why does the problem need to be addressed now (urgency)? Why not earlier or later?... If planning decisions are being used to support the purpose and need, how much time has passed since those decisions were made? Is there a need to re-consider or update those planning decisions? What data is available to evaluate the needs for the project area? If there are data gaps, how will those gaps be addressed?... What could happen if the problem were not addressed now? What has happened since it was not addressed earlier, and will happen if the situation is allowed to continue.

VI. **Section 3 - Alternatives Development (see note on 3.2 in section I above)**

Appendix B: Preliminary Table of Contents: There seems to be a discrepancy between this document and the required scope of alternatives to be considered listed in the Draft Scope at 3.1. Can this be assumed to be reconciled in the final scoping document? Where does System Alternatives analysis belong in the outline? Where will the Site Alternatives noted in 3.2 of the Draft Scope be developed in the EIS? Will existing Enbridge pipeline corridors that are being proposed for abandonment, be considered as an alternative route option? If so, why, if not, why not?

VII. **Section 4 - Environmental, Economic and Social Analysis.**

General considerations:

A. In the final Scoping document, please explain how the EIS will:

- Use "an interdisciplinary approach which will ensure the integrated use of the natural, environmental and social sciences" (4410.2200);
- "Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration...." (116D.03);
- "Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources" (116D.03) -- as this applies.

B. In the final scoping document please explain how the EIS will make recommendations, relative to the two strategies of avoidance and mitigation of potential environmental impacts.

- Establish avoidance as the standard for protection -- for high quality, rare or vulnerable resources -- for instance pristine or groundwater resources
- Ensure that the burden rests upon the proposer to demonstrate that there is no alternative to routes that create hazards and threats to resources identified in the EIS.

4.4.3 Consideration of local and regional economies – As residents of the Mississippi River Valley, we are pleased to see a commitment to analysis of tourism and recreational resources and economies. In this analysis it is critical to recognize the extent to which The health and sustainability of the culture, people, and natural resources of the region are interdependent.

Request for inclusion in Scope: A section on "existing conditions", describing the interdependence of the natural and socio-cultural ecosystems with the region's tourist and recreational economies -- situated between 1.2 and 1.3, or at 4.4 -- would aid in analysis and understanding of potential impacts, including but not limited to the following factors:

- Local and regional economies are based upon the quality of the natural and cultural resources, including some of Minnesota's most pristine and iconic waters, e.g. Source of the Mississippi.
- The resources that may be impacted by the project are central to the identity of "The Land of Sky Blue Waters"; and the identity of Minnesotans in all regions, and beyond.
- The environmental character of Northern Minnesota ("Up North") is its 'brand';
- The cultural heritage of Minnesota's tribes is central to the identity of the region,

4.4.4 Cultural Resources and Natural Resources 4.4.5.4. The Wild Rice lakes of the region are a unique resources that serves as an outstanding example of this interdependence. An interdisciplinary approach that incorporates natural, environmental and social sciences -- is critical to understanding the scope of potential impacts to these lakes for Native American people of the region. As well as to the resource. Wild Rice is an essential part of the tourist economy, character and experience and is valued by the state as part of Minnesota's identity. Minnesota designated **wild rice** as the official **state grain** in 1977. Wild Rice and the Ojibway People by Thomas Vennum, Minnesota Historical Society Press, is highly recommended as a resource for understanding the connection between these cultural and physical resources. <http://www.amazon.com/Wild-Ojibway-People-Thomas-Vennum/dp/087351226X>

Other - Environmental Concerns regarding Unused or Abandoned Pipelines in existing Enbridge corridors: Compared to natural gas, oil is subject to light-handed regulation –No Barriers to Entry: construction and operation of pipelines NOT regulated by FERC – No Barriers to Exit: termination and abandonment of pipelines NOT regulated by FERC. <http://www.ingaa.org/File.aspx?id=18255>

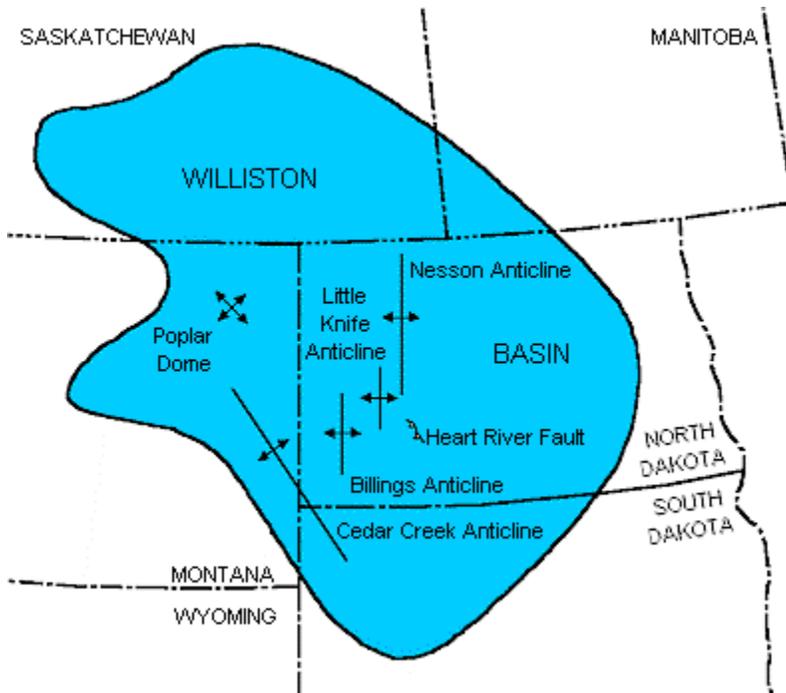
According to articles cited below, there are no abandonment guidelines, other than the federal requirements for disconnecting from active service. Therefore it appears that concerns regarding abandoned pipelines could be addressed in the EIS, as regulation is not preempted by the federal government if the lines are abandoned. The source cited below notes that “it is necessary to know as much information as possible about an abandoned pipeline because most pipeline companies will say any out of use line is only temporarily idled, even if has been out of use for 20 years”. The linked resources document liabilities that fall to landowners for abandoned lines.

Request for inclusion in the Scope: Request a mapped inventory of unused, idled and abandoned Enbridge lines in Minnesota to clarify their status, and showing those corridors which have been discussed in the CON and previous environmental review proceedings. Specify in the inventory which have been formally abandoned, and which are idled or unused and for how long they have been idled; if they have a history of repurposing, to indicate this; and what kinds of liquids have been conveyed or may be conveyed by the lines in the future. Please consider if this issue is appropriate for phased and connected actions and/or cumulative impacts. Please consider this issue for the Environmental Justice section, in response to concerns raised by residents of reservations with abandoned (?) lines.

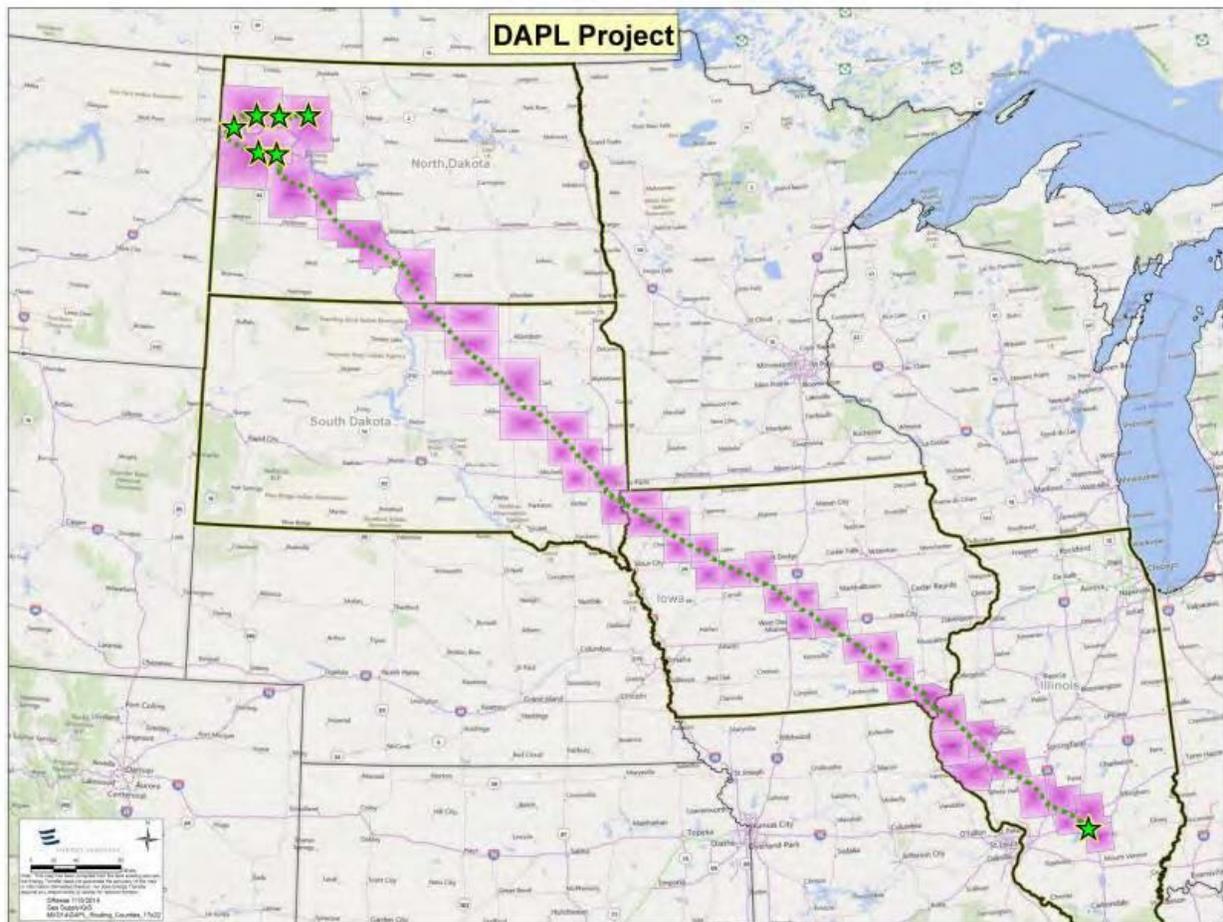
<http://www.pipelinelaw.com/2014/10/10/pipeline-abandonment-safety-supply-concerns-heart-recent-developments/>; <https://pgionline.com/2009/06/10/who-owns-abandoned-pipelines/>

*The following are a number of factors a court or jurisdiction might consider in determining whether an easement or right-of-way (including the buried pipeline) has been canceled, extinguished and thus effectually reverted to the landowner:

1. Whether the line is merely idle or is completely abandoned.
2. The length of time the line has been idled or abandoned.
3. Whether the grantee company continues to maintain, test and /or patrol the line.
4. Whether the company continues to show the line and/or the easement as an asset in its records and/or continues to pay taxes on the line and/or the easement.
5. Whether there are other lines in the same easement which have not been idle or abandoned.
6. Whether the company has constructed or acquired new lines on other routes which make the idle or abandoned line and the easement in which it runs unnecessary.
7. Whether the company has idled or abandoned the facilities at either end of the line thereby making it unlikely that the line would be returned to service.
8. Whether it is cost prohibitive to return the line to service.
9. Whether the company has released or abandoned other segments of the easement thereby making it impossible to use the line or a replacement line at some future time.
10. The company plans for future use of the line or replacement line in the same easement or corridor (citation in link above)



The DAPL Project





RECENTLY COMPLETED ENBRIDGE LINES

Alberta Clipper is a 1,607-km (1,000-mile) crude oil pipeline that provides service between Hardisty, Alberta, and Superior, WI. Initial capacity is 450,000 barrels per day (bpd), with ultimate capacity of up to 800,000 bpd available.

The Southern Lights Project also included the LSr Project, a new 504-kilometre (315-mile) crude oil pipeline from Cromer, Manitoba to Clearbrook, MN. This line was brought into operation in February 2009, and the line was filled with oil shortly thereafter.

Ingrid Kimball

From: Jane Ekholm <janevanhunnik@hotmail.com>
Sent: Thursday, May 26, 2016 8:05 PM
To: *COMM_Pipeline Comments
Subject: Public comment
Attachments: PROPOSED RESOLUTION Final version submitted 5-26-16.docx

**PROPOSED
RESOLUTION FOR PUBLIC COMMENT to
MN Dpt. Of Commerce Pubic Information &Environmental Scoping meeting of
May 11. 2016 in MacGregor, MN**

WHEREAS, this resolution is in response to:

- A. the request for **public comment** by the permitting agency, the Department of Commerce, for two pipeline projects by Enbridge, a foreign company from a friendly nation, conducting business in the United States by constructing a pipeline for the purposes of transporting Bakken Oil product from North Dakota to Superior, WI; and
- B. the permitting process for **North Dakota and Wisconsin** are complete or near completion;
- C. the proposal which consists of **two (2) projects**, the Sandpiper Pipeline construction along a new route, and Line three (3) Replacement and abandonment of lines located along MN Highway #2; and
- D. A **Certificate of Need** is required MN Stat. 216B. 243, MN Rue 7853; the routing of pipelines designated under MN Stat. 216 G. MN Rules 7852; and an EIS (Environmental Impact Statement) is required MN Rule 4410; and
- E. An MOU (Memorandum of Understanding) exists between DNR (Dept. of Natural Resources), PCA (Pollution Control Agency), and the permitting agency, for the purposes of addressing environmental concerns with **qualified personnel**; and
- F. Petroleum products in small quantities (one part per million) are known sources of **carcinogenic** and possibly mutagenic compounds; and
- G. Public health and safety are values that unite **diverse groups of people**, as well as mutual economic interests; and

WHEREAS, previously known issues of concern discussed at the above Scoping meeting were:

- A. **Spill analysis**, migration potential, clean up, and economic impacts, specifically:
 - a.. Impacts to **drinking water** sources dependent on groundwater quality,
 - b. Impacts to surface water sources on which tourism economy, flora and fauna **resources** are dependent,
 - c. Impacts to wild rice beds, and other cultural and spiritual values on which all **people, indigenous and otherwise**, are dependent;
- B. **Decommissioning/Abandonment of Line Three** by way of abandonment represents shirking of ongoing liability, placing the **liability of a foreign company** on American taxpayers.
- C. The **omission** of addressing alternate routes within the permit; specically of concern
 1. Maps **omit most surface water** bodies along the proposed pipeline route, giving the impression of a lower potential for impact;
 2. Proposed pipeline site is through extremely **sensitive waters and lands**, specifically crossing the Pine River watershed and wetland region, the Mississippi River (drinking water source to the Twin Cities), and related natural systems;

D. Only **22 new permanent jobs** statewide will result from this project, therefore referencing jobs as leverage for approval is misleading.

E. Proposed location of the new pipeline, as an **alternative to rail** is misleading with respect to:

1. Transport is up to the individual **companies who may choose** rail or truck to maintain quality which may be lost in tar or oil sand chemical slurry. Consequently the pipeline is only one possible means of transport; and

2. Access to sensitive remote sites in need of mitigation may not exist, allowing release of immeasurable amounts of product to inaccessible sensitive lands with no hope of **timely clean up or containment**.

J. The potential for **environmental justice** issues should be addressed with respect to easements located in rural areas of low and moderate income where landowners are not in a position to turn down additional funds, nor to litigate, making them more vulnerable;

K. In the event of a spill, the **precedent and intent** of the applicant to leave the cost of possible contamination clean up to the taxpayer is revealed by the request to abandon Line 3.

WHEREAS, new items submitted, herein, for consideration include:

1. The limited **ability to track** the interchange of contaminated waters between surface water and groundwater, in the case of a spill;

2. Inability to comply with the terms of the **1855 Treaty** by limiting contaminated water migration to political boundaries in the permitting process;

3. Disruption of the diverse spiritual and moral **values common to all** indigenous and non-indigenous, people who derive their culture and livelihood from a natural setting.

4. Items not discussed at the scoping meeting were brought to the attention of this citizen after the scoping meeting by an Anonymous contact, **a member of the public** (who fears reprisal) and on whose land a 'pin-hole' leak has resulted in:

- The pumping of about 64,000 gallons of product/ year from their property; and
- About 21 monitoring wells around their private drinking water well; and
- Allegedly, no product has migrated to their well; and
- Their property value is severely impacted; and
- The current property owner was not informed of the easements on the land, by an attachment to the deed or other information at the time of purchase, allowing him/her to make an informed purchase.

THEREFORE BE IT RESOLVED: that due consideration is given to:

A. the response to **public** comment,

B. the need to respect political boundaries and **cooperate** with the states of North Dakota and Wisconsin, as well as Canada for the public good.

C. Economic, cultural, spiritual, moral, natural and ethical **values and resources**

BE IT FURTHER RESOLVED in the spirit of compromise

- a. Upgrade of **existing permits** and replacement of existing pipelines along Hwy 2 should be, allowed and required, due to leaks and spills that have threatened water quality, flora, fauna, and property values specifically in areas of historic spills near Bemidji, and Grand Rapids; and
- b. **Abandonment** of any existing lines should not be allowed. Existing permits should be honored and upgraded to levels of the best available technology; and
- c. **Financial assurance** for existing lines along Highway 2 with an approved plan (by DNR and PCA) for adequate access for repair, containment and future incremental abandonment be established as the use of fossil fuels are diminished; and
- d. There is **no sustainable economic benefit** to the State of Minnesota for new construction of a pipeline.

- e. The **potential impacts** cannot totally, be identified. The threatened resources and values of the State identified in terms of economics, ecology and tax base from both short term and long term perspectives.
- f. Decision-makers should be held accountable for the outcome, based on the best available information.
- g. The **original purpose** of the pipeline, to transport Bakken oil or tar slurry, no longer appears viable with the decreased cost of petroleum product being inadequate to make 'fracking' technology cost effective.
- h. The move **toward clean energy** is likely to reduce the demand for carbon related product, thus reducing the industry stockholder's' ability to honor provisions for financial assurance, or have the resources to be adequately responsive, in the event of need.

Respectfully submitted,

Jane Ekholm, Cass County resident

PROPOSED

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- e. The **potential impacts** cannot totally, be identified. The threatened resources and values of the State identified in terms of economics, ecology and tax base from both short term and long term perspectives.
- f. Decision-makers should be held accountable for the outcome, based on the best available information.

- g. The **original purpose** of the pipeline, to transport Bakken oil or tar slurry, no longer appears viable with the decreased cost of petroleum product being inadequate to make ‘fracking’ technology cost effective.
- h. The move **toward clean energy** is likely to reduce the demand for carbon related product, thus reducing the industry stockholder’s’ ability to honor provisions for financial assurance, or have the resources to be adequately responsive, in the event of need.

Respectfully submitted,

Jane Ekholm, Cass County resident

From: [Katie Engelmann](#)
To: [*COMM Pipeline Comments](#)
Subject: eis comments
Date: Monday, May 23, 2016 10:29:37 AM

The Sandpiper pipeline is proposed to be routed through Polk County, Minnesota of which I am a resident. I would like to suggest a multitude of considerations that should be brought forth during the scoping of this project. While the following are my own views on the project, I hope that an honest and comprehensive EIS will provide greater analysis of all potential human and environmental impacts, and potential project alternatives.

First and foremost, the pipeline is a support system to oil extraction by the method of hydraulic fracturing from the Bakken fields in North Dakota. Catastrophic climate change impacts are already occurring in Minnesota and globally. As a citizenry, we should be focusing on curtailing such extraction instead of supporting it. Currently the oil and gas industry enjoys exclusions and exemptions to major federal environmental statutes intended to protect human health and the environment including: Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act; Safe Drinking Water Act, Clean Water Act, Clean Air Act, National Environmental Policy Act, Toxic Release Inventory under the Emergency Planning and Community Right-to-Know Act. As a result of this lack of oversight, human health, wildlife communities and the environment are being endangered. Until more thoughtful state regulations are enacted in North Dakota and until the petroleum industry at large is held accountable to remedy the negative impacts on human health and the environment, Minnesota should not put our human communities, land or water systems at risk of degradation. Fracking and its effects are taking place on public land such as National Grasslands. This act of private gain on public land, especially with such lack of regulation and oversight is abominable.

The proposed preferred Sandpiper route poses threats not only to waterways and wetlands in Polk County, but along the entire route. While I am concerned about the pipeline crossing the Red River of the North and Red Lake River watercourses, I am equally concerned about the route crossing the state's most famous river, the Mississippi. Both the Sandpiper and Line 3 replacement are proposed to cross this pristine headwaters area which is a valuable and cherished natural resource to residents of Minnesota and across the nation. The Sandpiper and Line 3 replacement pipelines will also cross Hay Creek, Shell River, Crow Wing River and numerous sensitive wetland areas. The bounty of freshwater resources in northern Minnesota including wild rice beds, lakes and rivers and fisheries generate \$7.2 billion annually. This doesn't include the tourism industry which grosses \$11.9 billion in sales. These are real and permanent jobs. I am concerned that multiple pipelines will be allowed to follow this corridor if approved. These pipelines threaten not only pristine ecosystems, but also human communities, cultural and economic livelihoods.

The price of oil has dropped drastically from the start of the 'Bakken Boom'. Production of oil in the Bakken region has declined rapidly within the last year, resulting in a steep decline in

new wells and infrastructure. Building a pipeline in Minnesota for a waning industry is not sustainable development. The current no build alternative that allows for road or railway transport will continue meeting the need to transport oil to refinery destinations. The Sandpiper will not eliminate or reduce the oil being transported by rail and truck. It will only allow more transportation to occur. Rail and truck transport allow flexibility to reach refineries and are the most feasible method given the short term production expectations.

The impact on communities in North Dakota associated with the 'Bakken Boom' have experienced unsustainable population growth leading to human trafficking, crime, drug use and trafficking, lack of adequate and safe housing, shortage of police and emergency response workers, cost of living increases and many health problems. This industry does not support the health and wellbeing of our neighbors in North Dakota.

The only thing constant in the 'Bakken Boom' is change. Minnesota's natural resources should not be placed at permanent risk for the economic advancement of the North Dakota Pipeline Company and its desire to transport hazardous material. This project is not in the best interest of current or future citizens of Minnesota, only for those who expect to make money. Instead of muddling along on our current march toward energy independence by evermore domestic production it is time we redefine milestones and work toward a significant transition away from oil. I am one among many, who will not stay idly silent, while the purity of what constructs our beautiful state, its rivers and lakes, are threatened.

Katie Engelmann

Please provide your contact information. This information and your comments will be publicly available.

Name: Dwight Engen Phone: 952-200-9676

Street Address: 994 Bavaria Hills Circle

City: Chaska State: MN ZIP: 55318

Email: dwrightengen@yahoo.com

My comments pertain to:

- Sandpiper Pipeline Project
- Line 3 Replacement Project
- Both Projects

I support these projects for these reasons:

- 1) Reliable energy
- 2) Great jobs / Good pay / Union Benefits paid to skilled workers
- 3) Future Energy
- 4) Energy Independence
- 5) Less dependency on foreign oil
- 6) Quality & Integrity standards by the Skilled Union Trades
- 7) Safety is a priority of the Industry, Embargo & the workers

Please provide your contact information. This information and your comments will be publicly available.

Name: JOE FOWLER Phone: 612-802-9823

Street Address: _____

City: _____ State: _____ ZIP: _____

Email: _____

My comments pertain to:

- Sandpiper Pipeline Project
- Line 3 Replacement Project
- Both Projects

I think pipelines are
great. & my dad said

I was concieved
in his camp for a
pipeline.

I I can work pipeline
I ~~we~~ can get my teeth
fixed

From: [David Franseen](#)
To: [*COMM Pipeline Comments](#)
Subject: Scoping EIS comment for Sandpiper (13-473 & 13-474) and Line 3 Replacement (14-916 & 15-137)
Date: Tuesday, April 26, 2016 3:20:08 PM

Dear Ms. MacAlister,

I am confident that the EIS process can be completed within the required 280 days.

In the last 3 years rail transport of bakken and canadian oil field products through Minnesota have had negative impacts on the safety of our citizens and our commercial grain commodity and processing sectors. Both of these negative free-market effects would be minimized by the proposed pipeline projects referenced above.

Northern Minnesota is currently economically depressed, and this too causes significant social costs to the residents outside of this area. These projects would ameliorate the effects this current economic condition has on the State as a whole.

Please work to expedite the completion of this EIS.

Sincerely,

David Franseen
2411 W Skyline Pkwy
Duluth, MN 55806

Ingrid Kimball

From: Kevin Lee <klee@mncenter.org>
Sent: Thursday, May 26, 2016 1:52 PM
To: *COMM_Pipeline Comments
Subject: Scoping Comments of FOH & MCEA
Attachments: FOH and MCEA Comments on Scoping in Sandpiper and Line 3 Replacement.pdf

Dear Ms. MacAlister,

On behalf of Minnesota Center for Environmental Advocacy and Friends of the Headwaters, I submit the Scoping Comments and attached exhibits in regards to the scoping of the environmental impact statements for the Sandpiper Pipeline and Line 3 Replacement Projects. The comments themselves are attached to this email, and the exhibits are downloadable with the provided links. Copies of these comments are also being submitted via the online portal and U.S. Mail.

Please do not hesitate to contact me should you have any questions or concerns.

[Exhibit 1_Expert Report of Dr Gunton with CV.pdf](#)



[Exhibit 2_Bakken Production Volumes Statistics ...](#)



[Exhibit 3_Construction Starts on Dakota Access ...](#)



[Exhibit 4_DAPL_FactSheet32-110515.pdf](#)



[Exhibit 5_Rail Transportation of Bakken Crude -...](#)



[Exhibit 6_Keystone FEIS Exec Summary.pdf](#)



[Exhibit 7_Enbridge FORM 10-Q.pdf](#)



[Exhibit 8_FinalDARP_EA_EnbridgeOct2015.pdf](#)



[Exhibit 9_Keystone FEIS Att K.pdf](#)



 [Exhibit 10_Spills of Diluted Bitumen from Pipel...](#)



 [Exhibit 11_Marathon - Where We Operate.pdf](#)



 [Exhibit 12_Mackinac-Line-5-Worst-Case-Spill-Sce...](#)



 [Exhibit 13_TransCanadaKeystone Root Cause Repor...](#)



 [Exhibit 14_AC Transmission Lines and Corrosion ...](#)



 [Exhibit 15_Bull Moose Transmission Line.pdf](#)



 [Exhibit 16_Stolen Direct.pdf](#)



 [Exhibit 17_Smith Direct.pdf](#)



 [Exhibit 18_Stolen Surrebuttall.pdf](#)



 [Exhibit 19_Smith Surrebuttall.pdf](#)



 [Exhibit 20_Enbridge Inc_Crude_Pipeline_Map.pdf](#)



 [Exhibit 21_nepa_revised_draft_ghg_guidance_sear...](#)



 [Exhibit 22_INGAACriteriaforPipelinesCo-Existing...](#)



 [Exhibit List.pdf](#)



Kevin P. Lee
Staff Attorney
Minnesota Center for Environmental Advocacy
26 E. Exchange Street, Suite 206
St. Paul, MN 55101

(651) 287-4861 phone
(651) 223-5967 fax

klee@mncenter.org
www.mncenter.org

**Minnesota Center for Environmental Advocacy
and
Friends of the Headwaters**

**Comments on the EAW and Draft Scoping Document
for the Sandpiper Pipeline Project
and the Line 3 Replacement Project**

**Submitted to the Minnesota Department of Commerce and the
Public Utilities Commission**

May 26, 2016

The EISs now being scoped are, in part, the result of years of work by FOH. FOH members have contributed thousands of volunteer hours in order to protect the Headwaters of the Mississippi from the dual threats of the proposed Sandpiper and Line 3 pipelines. The Headwaters of the Mississippi is a unique place, and its rivers, lakes, streams, wild rice waters and wetlands are uniquely threatened by both the immediate impacts of pipeline construction and the catastrophic impacts of a potential oil spill, a risk that will persist throughout the lifespan of these pipelines, which could easily be 50 years or more. FOH has never opposed all pipelines, but has sought from the beginning to show that there is a better place to put these pipelines. It brought forth alternative locations, including SA-04 and SA-05, to demonstrate its point.

The EIS is a critical step for these pipelines because it provides by far the best vehicle for considering alternatives to the applicant's proposal. While the Commission was persuaded that alternative locations for the proposed Sandpiper pipeline should be investigated in the Certificate of Need hearings, the Certificate of Need process never provided the platform that it should have to thoroughly investigate these alternatives. The limitation under the Certificate of Need proceedings is that, under the rules, the party presenting the alternative bears the burden of proof to show that there is a "more reasonable and prudent alternative" to the applicant's proposal.¹ This burden of proof, if interpreted literally under the rule,² raises real questions about whether *any* party could ever propose a "more reasonable and prudent alternative" unless they happen to be a pipeline company willing to build that alternative.

But an EIS can succeed where the Certificate of Need process failed, because "alternatives" under MEPA are different than "alternatives" under the Certificate of Need rule. Under MEPA, the statutory mandate is to consider "appropriate alternatives to the proposed action."³ The MEPA rules clarify that the EIS must "compare the potentially significant impacts of the proposal with those of other reasonable alternatives to the project."⁴ The EIS "must address one or more alternatives" of a range of types, including:

- alternative sites,
- alternative technologies,
- modified designs or layouts,
- modified scale or magnitude, and
- alternatives incorporating reasonable mitigation measures.⁵

If the EIS does not analyze alternatives of each type, it must explain why it failed to do so.⁶

Thus, under MEPA, there is no longer a problem with the burden of proof. The Commission and its delegate, the Department of Commerce, must make their own determination about alternatives to be considered in the EIS, and must engage in the work itself, without relying solely on the public (or the applicant) to provide all information about potential alternatives

¹ Minn. R. 7853.0130(B).

² As FOH noted in its exceptions to Judge Lipman's recommendations on the Certificate of Need, the authorizing law for this rule, Minn. Stat. § 216B.243, does not assign a burden of proof for alternatives, and thus FOH and MCEA continue to maintain that the Commission can turn to the statute, and not the rule, when evaluating alternatives in Certificate of Need proceedings.

³ Minn. Stat. § 116D.04.

⁴ Minn. R. 4410.2300(G).

⁵ *Id.*

⁶ *Id.*

Once completed, the EIS itself will dictate which alternatives may enter the Certificate of Need process. After the Commission has selected the range of alternatives to be considered through the scoping decision, the Commission must ultimately select its own preferred alternative as part of the final determination on the adequacy of the EIS. MEPA specifically prohibits the Commission from selecting a proposal that:

is likely to cause pollution, impairment or destruction of the air, water, land or other natural resources located within the state so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction.⁷

Importantly, MEPA requires that the Commission look beyond the Applicant's private financial and business preferences when considering "feasible and prudent alternatives." The same provision of MEPA concludes, with crystal clarity: "Economic considerations alone shall not justify such conduct."⁸ If the applicant's preferred route is not the environmentally preferred route, that will be decided before this project returns to the Certificate of Need hearings. A properly scoped EIS therefore provides a much more thorough assessment of reasonable alternatives than is typically seen in Certificate of Need proceedings, limited as they are by prohibitively restrictive burdens of proof.

But environmental review only works if the Commission's scoping decision reflects the public interest, and not the company's private interest. If the Commission decides that this EIS should be limited to analyzing NDPC's proposed corridor, then the State of Minnesota and its legacy of clean water will be at the mercy not only of this Applicant, but every other pipeline company for the foreseeable future who wishes to utilize eminent domain to cut a swath across the state for a new pipeline. These are the first state-only EISs on crude oil pipelines in Minnesota history, and the Commission stands at a historic crossroads. If the Commission scopes this EIS narrowly and does not allow a wide-ranging consideration of alternatives, the precedent will be set, and future pipeline EISs will look the same, absent legal challenge. Put simply, the Commission need not reject all pipelines, but if there are areas of the state that should be protected from pipelines, and FOH firmly believes that there are, now is the time to make that determination. Such an opportunity may never come again.

SECTION 1: STATEMENT OF PURPOSE AND NEED

1.1 Inappropriately Narrow Statement of Purpose and Need

The Statements of Purpose and Need are Phrased so Narrowly as to Severely Restrict Analysis of Reasonable Alternatives in the EIS. The information developed in the EIS must inform two critical decisions: Do we need these pipelines to transport oil? And if so, where should they go? In order to supply information relevant to these two broad questions, the definitions of purpose and need that inform the scope of the EIS must also be broad.

⁷ Minn. Stat. § 116D.04, subd. 6.

⁸ *Id.*

The various problems with the statements of Purpose and Need, identified below, collectively demonstrate that when preparing this EIS, the Department will rely on NDPC, Marathon, and Enbridge expertise at its peril. While MEPA allows an agency to utilize the applicant's work, when appropriate, it also obligates the agency to be responsible for any such work if it appears in the EIS.⁹ In other words, the agency must either do the work itself, or thoroughly and independently evaluate any work prepared by the applicant.

While this duty is incumbent upon the Responsible Governmental Unit (RGU) throughout the MEPA process, the RGU's duties are even more pronounced in relation to the purpose and need section of an EIS, where public and not private interests must predominate.

1.1.1 The Purpose Statements in the EAW and DSDD for the Sandpiper Project Have Been Stated Too Narrowly

The scope of an EIS is largely determined by the statement of purpose and need for the project. State regulations provide that any alternative that does not meet the purpose and need of the proposed project may be eliminated from consideration in the EIS.¹⁰ Each of the four statements of purpose and need – for the Sandpiper EAW, the Sandpiper DSDD, the L3R EAW, and the L3R DSDD – are phrased so narrowly that they effectively limit the choice of reasonable alternatives, contrary to state and federal laws on environmental review. The statements of purpose included in these scoping documents represent statements of private, corporate need, and state and federal law clearly prohibit environmental review based on such a constricted premise.

Because the alternatives analysis is the heart of the environmental impact statement, state and federal law is clear that agencies should not “slip past the strictures” of environmental review by “contriv[ing] a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration.”¹¹ To avoid this, agencies cannot simply rely on statements of what is “desirable from the standpoint of the applicant”; they must also consider alternatives that are practical or feasible from the standpoint of common sense.¹²

None of the statements of purpose in the scoping documents for Sandpiper/L3R consider any purpose other than what the applicant prefers, and none bear a significant relationship to the types of public purposes that traditionally justify PUC decisions. The Sandpiper EAW, for instance, appears to have been drafted by the applicant, and states that production volumes in the Williston Basin have resulted in a need for “more oil pipeline capacity to reduce the use of trains and tracks for oil transport.”¹³ The only stated reason that such capacity would need to go through Clearbrook or Superior, however, is to “use existing NDPC and Enbridge pipeline facilities.”¹⁴ Clearly, if the stated purpose is to increase pipeline capacity by connecting to Enbridge's existing facilities, then many reasonable means of bringing Bakken crude to market would be eliminated from consideration, ultimately undermining the very purpose of environmental review. Similarly, the Sandpiper DSDD frames the project's purpose as transporting growing volumes of Bakken crude production to

⁹ Minn. R. 4410.0400, subp. 2.

¹⁰ Minn. R. 4410.2300.

¹¹ *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997).

¹² 46 Fed. Reg. 18,026 (1981).

¹³ Environmental Assessment Worksheet for the Sandpiper Pipeline Project (hereinafter “SPP EAW”), Minnesota Public Utilities Commission, April 11, 2016, at 7.

¹⁴ *Id.*

“refinery markets in the US Midwest and beyond” via the terminal at Superior.¹⁵ If Superior is a crucial component of the project’s purpose, then there is only one way to meet that need: to go through Superior. This is not what environmental review is for. It is not intended to provide a *post hoc* validation of the applicant’s private, corporate preference. It is not the state’s obligation to facilitate the expansion of the applicant’s infrastructure network, but by adopting the applicant’s statement of purpose and need, the Department has done just that. The Department has transferred a private, corporate preference into a public preference, in violation of state law.

1.1.2 The Purpose Statements in the EAW and DSDD for the L3R Project Have Been Stated Too Narrowly

The DSDD for the L3R Project states that the underlying purpose is to “address safety and integrity concerns of the existing Line 3 pipeline.”¹⁶ With this very narrow purpose, the DSDD proposes to restrict analysis of several reasonable alternatives, including rail and trucking. The DSDD reasons that rail and trucking will not address pipeline safety and integrity concerns, but it concludes that rail and trucking “will be looked at as an alternative to continuing to operate the Line 3 pipeline.” MCEA and FOH are uncertain as to the meaning of these apparently contradictory statements, and recommend that the statement of purpose be broadened to reflect what the document appears to implicitly acknowledge: that the underlying purpose is to deliver diluted bitumen to oil refinery markets in the U.S., by safe and environmentally responsible means. The fact that the L3R proposal would virtually double the capacity of the existing line is a clear indication that the purpose of the project is not merely to address safety and integrity concerns. The increased capacity of the new pipeline as proposed is also not solely the result of enhanced pressure capabilities. The new pipeline will be two inches larger in diameter than the existing pipeline, and there is no identified safety concern that indicates a need for a larger diameter. The purpose of the project, rather, is to deliver large quantities of petroleum products to the refineries that can utilize it. This more accurate framing of the underlying purpose clarifies that alternatives such as rail and trucking are properly examined as alternatives in the EIS.

1.2 Sandpiper EAW and DSDD Purpose and Need

The internal inconsistency of the stated purpose for the Sandpiper project demonstrates the need to take a broader look at the underlying purposes behind the proposal. The EAW states that the purpose is to increase delivery capacity to “refineries located throughout the Midwest, Midcontinent, and East Coast via the existing Minnesota Pipe Line System at Clearbrook, Minnesota, via an existing terminal in Superior, Wisconsin.”¹⁷ But going through Enbridge’s existing system is only one way to increase delivery capacity to refineries across the Midwest and East Coast. The statements in the scoping documents mistake *means* with *purpose*. The means to an end are not the purpose of that end. Perhaps the clearest indicator of this confusion is the statement of purpose in the DSDD for the Sandpiper Project, which states that the purpose “is to transport growing crude oil production from the Bakken Formation in North Dakota to the Superior, Wisconsin, terminal and then

¹⁵ Draft Scoping Decision Document for Sandpiper Pipeline Project (hereinafter “SPP DSDD”), Docket Nos. PL-6668/CN-13-473; PL-6668/PPL-13-474, Minnesota Department of Commerce-Energy Environmental Review and Analysis, April 8, 2016 at 6.

¹⁶ Draft Scoping Decision Document for Line 3 Replacement Project (hereinafter “L3R DSDD”), Docket Nos. PL-15-137/CN-14-916, Minnesota Department of Commerce-Energy Environmental Review and Analysis, April 8, 2016 at 5.

¹⁷ SPP EAW at 30.

connect to various other pipelines expanding access to refinery markets in the US Midwest and beyond.”¹⁸ Pipelines terminating at Enbridge’s terminal at Superior are one means of “transport[ing] growing crude oil production . . . to refinery markets in the US Midwest and beyond,” but many other alternatives will achieve that same end without going through Superior.

The statement of purpose and need in the scoping documents must therefore be modified to encapsulate the true purpose, which is to deliver Bakken crude to the oil refinery market that can utilize it, thereby “expanding access to refinery markets in the US Midwest and beyond.”¹⁹ The EIS must analyze the means of achieving that end, including the applicant’s preference for utilizing its existing infrastructure but also including any other means of achieving that same end.

1.3 Outdated Oil Market Conditions in Sandpiper Purpose and Need

The Report of Dr. Gunton, attached as Exhibit 1, provides more detail on the changes in the oil markets since the Sandpiper Project was initially proposed.²⁰ The oil market changes bear serious implications both for the overall need for the project and for the analysis of alternatives to the project in the EIS, and yet none of the scoping documents even acknowledge the drastic changes occurring in the Bakken. The Sandpiper EAW, for instance, states that “crude oil production in the Williston Basin . . . has risen rapidly in recent years”²¹ and exceeded existing pipeline capacity, necessitating additional pipeline capacity from North Dakota. When the applicant conducted its open season in January of 2014, production volumes in the Bakken were indeed increasing rapidly. In that month, production had increased 30% from the previous January.²² However, production peaked in December of that year, and since the peak production has actually declined 14%.²³ Production at individual wells has declined even further. Daily production per well has precipitously declined to a volume not seen since 2008.²⁴ Production volumes per well peaked in mid-2012, and have been declining ever since.²⁵

Clearly it is no longer true that “crude oil production in the Williston Basin” is “growing.” The statement of purpose and need in the Sandpiper DSDD, which states that the purpose of the projects is to “transport growing crude oil production from the Bakken formation,” is demonstrably inaccurate and should be revised to reflect the fact that production volumes have in fact peaked and are in a state of accelerating decline.

1.4 Dr. Gunton’s Report as a Separate Comment

The report, attached as Exhibit 1, details changes in the oil markets since the Sandpiper Project was initially proposed and analyzes the impact of those changes on the scoping process for the SPP EIS, particularly with regard to the DSDD’s assessment of the project’s purpose and need. Although it is submitted as an

¹⁸ SPP DSDD at 6.

¹⁹ SPP DSDD at 6.

²⁰ Ex. 1 (Dr. Thomas Gunton & James Hoffele, *Evaluation of Minnesota Draft Scoping Decision Document for Sandpiper Pipeline Project*, May 21, 2016).

²¹ SPP EAW at 6.

²² See Ex. 2 (North Dakota Industrial Commission, Dep’t of Mineral Resources, Oil & Gas Division, “Historical Monthly Bakken Oil Production Statistics,”

<https://www.dmr.nd.gov/oilgas/stats/statisticsvw.asp>, last retrieved May 2, 2016).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

attachment to the comments of FOH and MCEA, the report is an independent comment on the SPP DSDD, and should be responded to by the agency.

SECTION 2: ALTERNATIVES PROPOSED FOR INCLUSION IN THE EIS

2.1 Alternatives Must Include SA-03, SA-04 and SA-05

Alternatives to the Applicant's preferred route for Sandpiper must include alternatives that do not terminate in Superior, Wisconsin, including, at a minimum, SA-03, SA-04, SA-05 and alternatives terminating in Patoka, Illinois. As noted above, the more appropriate statement of purpose and need for the Sandpiper Project is:

The purpose of this project is to transport crude oil from Bakken oilfields to the refineries that demand it, in a manner that is safe and environmentally responsible.

This statement accords with state and federal environmental review principles that caution against uncritically accepting the applicant's account of the project's need. Properly framed, it is therefore clear that the EIS must include an analysis of alternatives that do not necessarily terminate at Enbridge's terminal in Superior, Wisconsin. Any alternative that offers a reasonable means of transporting Bakken light sweet crude to oil refineries that demand it, particularly in the American Midwest and Midcontinent regions, should be analyzed and compared to the applicant's preferred route. This would include system alternatives such as SA-04 (terminating in Joliet, IL), SA-05 (Joliet, IL), and other as yet-undefined alternatives that could terminate in Patoka, Illinois, where anchor shipper Marathon maintains its system pipeline hub and the destination point for the great majority of crude oil proposed for shipment by the project. One such alternative could be the route of the Energy Transfer Partners' Dakota Access Pipeline, which is now fully permitted and will begin construction in the spring of 2016 with operations commencing in late 2016. The Dakota Access Pipeline begins at the Williston Basin near Stanley, North Dakota and terminates near Marathon's pipeline hub in Patoka, Illinois.²⁶ The pipeline is projected to transport up to half of all crude production originating in the Bakken oilfields.²⁷

In addition to the alternatives discussed above, Dr. Gunton's report (Ex. 1) also details several transportation corridors and methods that would serve as alternate means of transporting Bakken crude to the refinery market.²⁸ FOH and MCEA hereby incorporate those comments by reference.

2.2 L3R Alternatives that May Not Include Continued Operation of the Existing Line 3.

Because the true underlying purpose of the existing Line 3 is to deliver heavy diluted bitumen from Canada to the American refineries that demand it and can utilize it, the purpose of the L3R project is to do so in a manner that is safe and environmentally responsible. The applicant's preferred alternative clearly fits this statement of purpose and need, as complete replacement of an aging pipeline is one way to deliver this petroleum product to American refineries. Other alternatives, however, would be to utilize different forms of crude transportation, such as rail and trucking, but the L3R scoping documents appear to exclude such alternatives, noting that they would not address safety and integrity issues in the existing Line 3.²⁹ Despite concluding that rail and trucking will not meet the stated purpose of the project, the DSDD nevertheless

²⁶ Ex. 3 (Richard Nemecek, *Construction Starts on Dakota Access Pipeline*, Natural Gas Intelligence, May 2, 2016).

²⁷ *Id.*

²⁸ See Ex. 1 at 3-5.

²⁹ L3R DSDD at 7.

concludes that rail and trucking “will be looked at as an alternative to continuing to operate the Line 3 pipeline.”³⁰ As described above, MCEA and FOH are uncertain as to the meaning of these apparently contradictory statements, but a properly broadened statement of purpose would clarify that alternatives such as rail and trucking are properly examined as alternatives in the EIS.

2.3 Alternatives Based on Actual Demand

Alternatives utilizing alternate modes of transportation (rail, trucking) for either the Sandpiper Project or the L3R Project must be based on actual demonstrated demand for crude oil shipped via rail and truck, not on the volumes and destinations assumed by the Project As Proposed. Both the Sandpiper Project and the L3R Project will increase the transportation capacities of existing petroleum pipeline corridors.³¹ The L3R Project would “restore the line to its historic intended operating capacity of 760,000 barrels per day (bpd) from its current capacity of 390,000 bpd.”³² Sandpiper “is being designed to expand by 265,000 bpd to an ultimate annual capacity of 640,000 bpd” from Clearbrook to Superior, and up to 365,000 bpd from Beaver Lodge to Clearbrook.³³ Absent future upgrades, the Sandpiper Project as currently proposed would transport 225,000 bpd from Beaver Lodge to Superior.³⁴

Transportation choices do not take place in a vacuum. It is not reasonable to assume that if the Sandpiper project was not built (the No Action Alternative), producers would instead ship via rail or truck the same volumes that Sandpiper would otherwise carry. It is similarly unreasonable to assume that, if a rail or trucking alternative were chosen instead of Sandpiper, producers would utilize that transportation to the same extent that they would utilize a pipeline. Shipping decisions would instead be based on case-by-case consideration of fixed costs, which would be different in a rail or trucking alternative.

The DSDD should clarify that the alternatives of rail and trucking must not be evaluated as if they would transport Sandpiper’s volumes, unless the alternative proposed actually increases capacity to ship oil via that method. The Draft EIS should conduct a separate analysis of alternatives in which rail or trucking were modestly scaled up to meet transportation needs from the Bakken, but projections of use of those alternatives should be based on actual economic analysis, not just an assumption that the same volumes would be shipped as Sandpiper and the Line 3 Replacement propose to ship.

2.4 Pipe Thicknesses as Modified Scale or Magnitude Alternatives to the Sandpiper Project

Both the Sandpiper and the L3R DSDDs state that “the EIS will not be evaluating alternatives of different pipe dimensions or different pipe metal thickness. Due to engineering requirements and requirements under PHMSA, this EIS will not address variations in different pipe dimensions or different pipe metal thickness as an alternative; pipe thickness will be discussed as a mitigation option.”³⁵ These statements are overly conclusory, and provide no verifiable justification for excluding an alternative other than simply providing a

³⁰ *Id.*

³¹ Although the Applicant’s preferred route for the Sandpiper Project deviates from its existing system, the preferred route nevertheless connects two endpoints that are connected today, and thus the preferred route maintains the same fundamental connectivity, albeit with increased capacity.

³² Environmental Assessment Worksheet for the Line 3 Replacement Project (hereinafter “L3R EAW”), Minnesota Public Utilities Commission, April 11, 2016, at 6-7.

³³ SPP EAW at 6.

³⁴ SPP DSDD at 8.

³⁵ L3R DSDD at 12-13; SPP DSDD at 13-14.

generic reference to engineering and regulatory requirements. Presumably these requirements do not preclude consideration of higher engineering standards as a project option that might affect capacity, integrity and corresponding risks of releases. At a minimum, specific engineering or regulatory requirements that affect the viability of pipe thickness as an alternative must be identified and discussed, and an explanation must be given detailing why those requirements render the alternative unsuitable. Because environmental review is fundamentally an information-gathering exercise, cursory or generic statements that a particular alternative is unsuitable are not sufficient.³⁶

2.5 Alternatives that Would Transport Lower Volumes

As described in more detail in Dr. Gunton's report, attached as Exhibit 1, production volumes in the Williston Basin have been declining since 2014.³⁷ The Sandpiper Project was originally proposed at a time when production volumes were continuing to increase, and the proposal reflects those assumptions. Those volumetric trends have since reversed, and it is now reasonable to consider alternatives that may increase pipeline capacities more modestly than the project as proposed. Such alternatives could include upgrading pump stations on the existing Line 81 corridor to increase capacity of the existing system. Modestly increased transportation capacities may now satisfy the needs posed by the current production volumes in the Williston Basin, while also avoiding many environmental impacts caused by the proposed project. Under the criteria of 4410.2300(G) requiring consideration of alternatives of modified scale or magnitude, then, such lower transportation volume alternatives should be analyzed in the EIS.

2.6 Contrasting Landscapes With Respect to Potential Impacts of Oil Releases

Many alternatives have been proposed for study in the EIS, including several by FOH. The Applicant's proposed routes cross landscapes often characterized by morainal hills, high value wetlands, rivers, and other natural resources, and that have fewer roads than alternative proposed locations to the west and southwest. Alternatives such as SA-04 cross much flatter landscapes with substantially higher road densities. FOH and MCEA contend that oil releases on the flatter terrain are easier to contain and much less likely to quickly move away from the pipeline. Oil releases on flat terrain with lots of roads are much less likely to cause long-term impacts and are more likely to permit rapid response to a pipeline ruptures. The EIS should therefore ensure that these two landscape types are thoroughly contrasted in the alternatives analysis.

³⁶ Minn. R. 4410.2300(G).

³⁷ Ex. 1 at 6 (Expert Report of Dr. Gunton).

2.7 No-Action Alternative for the Sandpiper Component of the EIS

2.7.1 The Analysis of the No-Action Alternative Must Incorporate the Increased Pipeline Capacity Provided by the Dakota Access Pipeline Currently Under Construction, As Well As Other Current and Future Proposals for Pipeline Capacity

As required by Minn. R. 4410.2300(G), a no-action alternative must be included in the EIS. The DSDD for the Sandpiper Project states that the “No Action Alternative assumes transport of Bakken oil will continue by other means, including rail, interstate highways and other pipeline systems.”³⁸ Currently, Energy Transfer Partners’ proposed Dakota Access Pipeline has received all necessary regulatory approvals, and construction for the pipeline has begun.³⁹ The project will provide new pipeline capacity of between 450,000 and 570,000 bpd, representing well over half of all production in the Bakken.⁴⁰ The new pipeline will terminate in Patoka, Illinois, providing access to oil markets in the Midwest, East Coast, and Gulf Coast.⁴¹ Because Dakota Access Pipeline has moved from the proposal stage to the construction stage, the capacity that it will provide should be analyzed in the No Action Alternative as part of the assumptions concerning available transportation capacity.

But the Dakota Access Pipeline is not the only project that will provide crude oil transportation from the Bakken. As detailed in Dr. Gunton’s report, current forecasts estimate *surplus* pipeline capacity from the Bakken of up to 866,000 bpd in 2020. Including rail, total surplus capacity is forecasted at up to 2.5 million bpd.⁴² The analysis of the No Action Alternative in the EIS must include an assessment of total surplus transportation capacity that would exist should the Sandpiper Project not be built.

2.7.2 The Analysis of the No-Action Alternative Must Incorporate an Economic Analysis of the Effect of Continued Low Oil Prices on Production Volumes in the Williston Basin

As described in more detail in Dr. Gunton’s report (Ex. 1), there is substantial evidence that, in an environment of continued low oil prices, total production volumes in the Bakken will decline. The EIS should therefore include the economic analysis exploring the relationship between oil prices, transportation capacity, transportation cost and production volumes, so that the environmental impacts associated with those production volumes can be compared.

2.7.3 The Analysis of the No-Action Alternative Must Clarify that It Will Avoid the Environmental Impacts of Increased Production Volumes in the Williston Basin, Including But Not Limited to Ground Water Contamination, Climate Change Impacts, Methane and Ethane Leakage, and Air Quality Impacts

Because denial of applicant’s proposal will likely result in continued decreasing production volumes in the Williston Basin (as described in Dr. Gunton’s report, Ex. 1), the environmental impacts associated with extraction of crude oil in the Williston Basin, including ground water contamination, methane and ethane

³⁸ SPP DSDD at 14.

³⁹ Ex. 3 (Natural Gas Intelligence Article on Dakota Access Pipeline Construction).

⁴⁰ Ex. 4 (Dakota Access Pipeline Factsheet); Ex. 2 (Bakken Oil Production Statistics).

⁴¹ *Id.*

⁴² Ex. 1 at 4 (Expert Report of Dr. Gunton).

leakage, climate change and air quality impacts, will be lessened in the No Action Alternative. The analysis of the No Action Alternative should clarify that denial of the applicant's proposal will avoid those environmental impacts.

2.7.4 The Environmental Impacts of Subsection 2.6.3 Must be Quantified as an Economic Value of Damages Utilizing Regulatory Impact Analysis Tools Such as the Social Cost of Carbon or Its Equivalent

To the extent practicable, all environmental impacts avoided by the No Action Alternative should be quantified and expressed as economic damages avoided. The environmental impacts avoided by the No Action Alternative – avoided climate change impacts, methane and ethane leakage, ground water contamination and air quality impacts – are all readily quantifiable by widely available regulatory impact analysis tools, such as the Federal Social Cost of Carbon. The Social Cost of Carbon can be used to estimate the avoided damages from avoided CO₂ emissions as a result of low oil prices constraining extraction activities in the Williston Basin (thus avoiding combustion of the petroleum products that would have been produced by those extraction activities), and it can also be used to estimate avoided damages from methane and ethane leakage in extraction, once those gases are converted to tons of CO₂ equivalent.

2.7.5 The No Action Alternative Must Indicate that Denial of the Applicant's Proposal Will Not Result in Higher Rail Traffic Volumes in Minnesota

As described in sections 2.7.2 and Dr. Gunton's report, Bakken production volumes in the No Action Alternative are likely to continue their currently decreasing trend. The applicant's original CON application, however, asserts that the No Action Alternative would involve greater rail transportation through Minnesota, arguing that "as Bakken production increases, so would train traffic carrying crude oil through Minnesota."⁴³ These assumptions are no longer true, and it now appears that Bakken production will *not* continue to increase in the absence of the Sandpiper Project's capacity. As described above, as oil markets stay in a low-price environment and the only transportation options are comparatively more expensive, producers respond by restricting production. This is empirically demonstrated by indicators of Bakken production from the last two years.⁴⁴ Rail shipments from the Bakken have also correspondingly declined.⁴⁵ Rail traffic from the Bakken peaked in 2014 and has been declining since that time.⁴⁶ This trend will continue in the No Action Alternative. The analysis of the No Action Alternative must therefore clarify that denial of the Sandpiper Project will not increase rail traffic through Minnesota.

2.7.6 The No Action Alternative Must Indicate that Denial of the Sandpiper Project Will Not Result in Higher Consumer Prices for Petroleum Products

Because petroleum transportation is diverse and interconnected in the U.S., there is no empirical evidence that consumer prices for petroleum products like gasoline are significantly affected by the construction of

⁴³ Docket Nos. PL-6668/PPL-13-473; PL-6668/CN-13-473, *Enbridge Pipelines (North Dakota) LLC Sandpiper Pipeline Project Environmental Information Report*, filed Nov. 8, 2013, at 2-2.

⁴⁴ Ex. 1 at 5-6 (Expert Report of Dr. Gunton).

⁴⁵ Ex. 5 (EIA Crude Oil Rail Transportation Statistics).

⁴⁶ *Id.*

new pipelines. In fact, “varying pipeline availability has little impact on the prices that that U.S. consumers pay for refined products such as gasoline.”⁴⁷

2.8 No-Action Alternative for the L3R Component of the EIS

2.8.1 The “No Action” Alternative for L3R Must Be Identified in the Draft EIS

Enbridge must clarify what would happen if the L3R project did not go through. Presumably, the choices are that Enbridge would either continue to run the line at increased cost, or it would decommission it because it would no longer be economical to operate. Either way, the “no action” alternative is a key part of the EIS because it gives decision-makers a baseline against which to compare impacts of the project.

If Enbridge would continue to operate the existing Line 3, the EIS should consider an additional alternative to decommission Line 3 entirely, utilizing alternative means of transportation for all volumes transported by the existing line.

2.8.2 The Analysis of the No-Action Alternative Must Incorporate an Economic Analysis of the Effect of Continued Pipeline Restrictions on the Production Volumes of the Alberta Oil Sands Deposits

As described in more detail in Dr. Gunton’s report (Ex. 1) there is substantial evidence indicating that, in an environment of continued low oil prices and high transportation costs from restricted pipeline capacity, total production volumes in the Alberta oil sands region will decline.⁴⁸ The Final Supplemental Environmental Impact Statement for the Keystone XL Project noted that:

Oil sands production is expected to be most sensitive to increased transport costs in a range of prices around \$65 to \$75 per barrel. Assuming prices fell in this range, higher transportation costs could have a substantial impact on oil sands production levels— possibly in excess of the capacity of the proposed Project—because many in situ projects are estimated to break even around these levels. Prices below this range would challenge the supply costs of many projects, regardless of pipeline constraints, but higher transport costs could further curtail production.⁴⁹

The EIS should therefore include an economic analysis exploring the relationship between pipeline capacity and production volumes, so that the environmental impacts associated with those production volumes can be compared. The Draft EIS should address the fact that increased pipeline capacity will increase extraction and production of bitumen from the Alberta oil sands region in a low oil price market, identify the impacts of that increase, and clarify that the No Action Alternative will avoid the impacts of that increased extraction and production.

⁴⁷ Ex. 6 at ES-12 (Keystone XL SEIS Executive Summary).

⁴⁸ Ex. 1 at 8 (Expert Report of Dr. Gunton); *see also* Ex. 6 at ES-12 (Keystone XL SEIS Executive Summary).

⁴⁹ Ex. 6 at ES-12.

2.8.3 The Analysis of the No-Action Alternative Must Clarify that It Will Avoid the Environmental Impacts of Increased Production Volumes of Alberta Oil Sands, Including But Not Limited to Water Withdrawals, Water Contamination, Energy Consumption, Air Quality Impacts and Climate Change Impacts

Because denial of applicant’s proposal will likely result in decreased production volumes in the Alberta oil sands region,⁵⁰ the environmental impacts associated with extraction of oil sands and the production of bitumen products, including water withdrawals, water contamination, energy consumption, air quality impacts and climate change impacts, will be lessened in the No Action Alternative. The analysis of the No Action Alternative should clarify that denial of the applicant’s proposal will avoid those environmental impacts.

2.8.4 The Environmental Impacts of Subsection 2.7.2 Must be Quantified as an Economic Value of Damages Utilizing Regulatory Impact Analysis Tools Such as the Social Cost of Carbon or its Equivalent

The environmental impacts avoided by the No Action Alternative – water withdrawals, water contamination, energy consumption, air quality impacts and climate change impacts – are all readily quantifiable by widely available regulatory impact analysis tools, such as the Federal Social Cost of Carbon. The Social Cost of Carbon can be used to estimate the avoided damages from avoided CO2 emissions as a result of low oil prices and low pipeline capacity constraining extraction activities in the Alberta oil sands region (thus avoiding combustion of the petroleum products that would have been produced by those extraction activities), and it can also be used to estimate avoided damages from other greenhouse gases, once those gases are converted to tons of CO2 equivalent. To the extent practicable, all environmental impacts avoided by the No Action Alternative should be quantified and expressed as economic damages avoided.

SECTION 3: ANALYSIS OF THE PROPOSED PROJECT’S ENVIRONMENTAL, ECONOMIC, EMPLOYMENT AND SOCIOLOGICAL IMPACTS

3.1 Method for Assessing Impacts of Crude Oil Releases

Of all potential impacts of a pipeline, impacts to water from an oil spill may well be the most catastrophic. While FOH and MCEA expect the EIS to identify mitigation measures, we also expect the EIS to provide an independent assessment of potential oil spill scenarios and the devastating consequences on nearby lakes, rivers, streams and wetlands.

3.1.1 The EIS’s Treatment of the Environmental Impacts of Oil Spills Must Include Narrative Descriptions in Addition to Any Numerical Risk Assessment

An EIS that analyzes the environmental impacts of oil spills by relying primarily on numerical risk assessments and engineering forecasts of oil release amounts (based on shutdown systems and other safety measures) is inadequate. The purpose of an EIS is full disclosure of potential impacts in a manner understandable to citizens and agencies.⁵¹ Both the Sandpiper and L3R Projects are complex and

⁵⁰ Ex. 1 at 8; Ex. 6 at ES-12.

⁵¹ See, e.g., Minn. R. 4410.2300 (“An EIS shall be written in plain and objective language.”); Minn. R. 4410.0300 (The purpose of the an EIS is to “provide usable information to the project propose,

controversial proposals that have the attention of many citizens and decision-makers that lack the technical expertise to appreciate impact analysis that is primarily technical and numerical. The oil spill risk assessment in the EISs for the proposed pipelines should be narrative-based, similar to the Oak Ridge National Laboratory's 2012 study submitted with the Direct Testimony of Paul Stolen in previous Sandpiper proceedings.⁵² That study looked at a range of shut-down times and described the consequences that might ensue. The sites selected for modeling should include this type of narrative impact analysis in addition to any technical, numerical risk assessments.

3.1.2 The EIS Should Economically Quantify the Environmental Impacts of Oil Spills Modeled by OILMAPLAND and SIMAP

The DSDD for the Sandpiper Project and the L3R Project state that large volume spill modeling will be conducted by RPS ASA using OILMAPLAND and SIMAP modeling software.⁵³ For any such spill modeling in the combined EIS, the environmental impacts of the modeled spills must be economically quantified as a projected estimate of socioeconomic damages. The accounting of damages is a routine practice, and there is no reason why an EIS would not include a quantification of modeled oil spill impacts. If a spill were to occur of the type modeled in the EIS, federal law requires that the environmental impacts be quantified in a Natural Resource Damage Assessment.⁵⁴ Federal regulations require that the degree and extent of oil spill damages are quantified relative to a baseline, and that quantification forms the basis for a demand for payment issued to the responsible party.⁵⁵ Because this process would be a requirement if a spill were to occur, the modeling of oil spill impacts in the EIS must include the economic quantification process as part of the EIS itself. One possible methodology for this quantification analysis is contained in the Oak Ridge National Laboratory's 2012 study referenced above.⁵⁶

3.1.3 The Economic Damages for Oil Spills Modeled in the EIS Must Be Compared Against the Coverage and Limits Included in the Applicant's Liability Insurance Policy

In the event that an oil spill should occur, any response or restoration costs that are not covered by the applicant's liability insurance policy would be borne by the responsible party. If such uninsured costs exceeded the responsible party's liquid assets, the responsible party's bankruptcy could result in the costs being borne by public funds. In 2014, for instance, Enbridge estimated that its total cost estimate for the Line 6B crude oil release near Marshall, Michigan was \$1.21 billion.⁵⁷ Larger oil spills modeled in the EIS would of course incur larger estimated restoration costs, and to the extent that any potential cost estimates exceeded the limits of NDPC's liability insurance coverage, those costs could cause a liquidity crisis and potential bankruptcy proceeding that would imperil public funds. In order to provide some indication of the likelihood of a spill-induced corporate bankruptcy, the EIS should include a comparison of potential spill liabilities with

governmental decision makers and the public concerning the primary environmental effects of a proposed project.”).

⁵² Ex. 16, at Apx. 1 (Direct Testimony of Paul Stolen, eDocket No. 201411-104748-02, Docket No. PL-6668/CN-13-473, Nov. 19, 2014).

⁵³ SPP DSDD at 27, L3R DSDD at 26.

⁵⁴ 15 C.F.R. Part 990, promulgated pursuant to the Oil Pollution Act of 1990.

⁵⁵ 15 C.F.R. § 990.52, 15 C.F.R. § 990.62.

⁵⁶ Ex. 16 at Apx. 1, Ex. 4.

⁵⁷ Ex. 7 at 19.

the applicant's insurance coverage and limits. Such an analysis requires transparency by NDPC and Enbridge on existing or projected insurance coverage.⁵⁸

3.1.4 Oil Spill Modeling Should Not Be Based on Data Provided by NDPC

Both DSDDs indicate that “the Applicant will provide data on maximum spill volumes, spill frequency and the types of crude oil being transported” for the purposes of modeling large volume oil spills.⁵⁹ The project applicant's vested economic interest in limiting oil spill modeling requires that the RGU conduct an independent analysis of the risk of large volume oil spill releases. Spill volumes and frequencies are consistently underestimated by entities proposing pipeline projects, and federal agencies have noted that many estimates of Enbridge's 2010 Line 6B oil spill have been “substantially greater” than Enbridge's estimate.⁶⁰ There have also been discrepancies in the pipeline operator's estimate of shut down times in the event of a spill, as compared to actual shut down times. Data provided by the applicant is similarly unlikely to provide an adequate basis for evaluating the environmental impacts of a potential spill, and the oil spill modeling for the Sandpiper/L3R EIS must accordingly be based on an independent assessment of projected spill volumes and frequencies.

3.1.5 The Estimate of Spill Frequency Must be Based on Realistic Assumptions that Include the Incidence of Human Error

Because risk analysis is so greatly influenced by the probability of an event, the oil spill modeling included in the EIS is crucially dependent on accurate assumptions regarding spill frequency. Reliance on NDPC data for spill frequency assumptions is clearly inadequate, as NDPC's economic interest in minimizing the risk of oil spills ensures that any supplied data would be affected by a conflict of interest. Moreover, while NDPC and Enbridge will certainly propose mitigation measures designed to decrease the risk of a spill, human error poses a risk that cannot be mitigated. The probability of oil spills must therefore be independently evaluated in the EIS. Other studies indicate that human error is a significant cause of oil releases from facilities associated with pipelines, such as storage tanks.⁶¹ The spill volumes resulting from incorrect operations of tank facilities, furthermore, tend to be larger than mainline spill volumes.⁶² The EIS for the Sandpiper and L3R Projects must therefore include a consideration of the frequency of human error in equipment operations, the resulting likelihood that such human error would cause oil releases, and the environmental impacts of those potential releases.

3.1.6 Oil Spill Modeling for the L3R Project Must Include Diluted Bitumen

The L3R DSDD states that the oil spill models “will be run for a set of scenarios that include the following crude oil types: light sweet Bakken crude oil, Cold Lake Blend and Cold Lake Winter Blend.”⁶³ Although the proposed pipeline is physically designed to transport a variety of crude products, including light, medium and heavy crudes, the primary purpose of the L3R Project is to transport diluted bitumen from Hardisty, Alberta. Diluted bitumen is a fundamentally different product than Bakken light sweet crude, and oil spills of diluted

⁵⁸ Minn. R. 4410.2400 (“No material may be incorporated [into an EIS] by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.”).

⁵⁹ See, e.g., L3R DSDD at 25.

⁶⁰ See Ex. 8 at i (Final Damage Assessment and Restoration Plan for Line 6B Spill).

⁶¹ See Ex. 9 at 3 (Keystone XL SEIS Attachment K).

⁶² *Id.*

⁶³ L3R DSDD at 26.

bitumen differ significantly in their environmental impact.⁶⁴ Any EIS that conducted oil spill modeling for the L3R Project without modeling the effects of a diluted bitumen spill would clearly be inadequate. The EIS should also include the results of the National Academy of Sciences recent study concerning the environmental impacts of diluted bitumen spills.⁶⁵ That study “brought together diverse expertise on the chemistry and environmental impacts of crude oils and broad experience in spill response,” and its findings were independently reviewed by an extensive committee of experts.⁶⁶ Among its key findings was the conclusion that “spills of diluted bitumen pose particular challenges when they reach water bodies. In some cases, the residues can submerge or sink to the bottom of the water body.”⁶⁷

3.1.7 The Environmental Impacts of a Diluted Bitumen Spill Must Incorporate the Findings of the National Academy of Sciences

The EIS should address the implications of the NAS study of bitumen to the sensitive locations, including wetlands crossed by the proposed routes. The study suggests that it may be impossible to clean up diluted bitumen from certain locations, and/or that the attempts to clean up oil releases from such areas will in effect destroy these areas. The implication of this finding is that should Line 3 be permitted in the location desired by the Applicant the state of Minnesota would need to make this decision based on an assumption that no significant oil releases would ever occur for the life of the project.

3.1.8 The FSDDs Must Identify the Representative Sites Proposed for Oil Spill Modeling

Both DSDDs describe a modeling process consisting of 2-D modeling at five representative sites and 3-D modeling at two sites.⁶⁸ None of these proposed modeling sites are identified. It is accordingly impossible to assess whether the selected sites are indeed representative, or whether they represent best-case scenario oil spill locations. The selection of representative sites cannot be delegated to the applicant or to RPS ASA, the environmental modeling consultant for the EIS. The location of those sites is a critical detail in ensuring that the oil spill modeling assesses realistic scenarios based on a variety of sites along the proposed route. The selected sites should, at a minimum, sample critical terrains, ecosystems, water bodies, habitats, High Consequence Areas and Natural Disaster Hazard Areas crossed by the proposed route. Although the DSDDs indicate an awareness that releases at High Consequence Areas and Natural Disaster Hazard Areas represent particularly significant impacts, the documents do not provide any indication of the analysis of those impacts that will occur in the EIS. At a minimum, the oil spill modeling must incorporate High Consequence Areas and Natural Disaster Hazard Areas as representative sites. At least one site must be located beneath the bed of a large volume flowing river such as the Mississippi or St. Croix. These representative sites must be chosen by the RGU in the FSDD.

3.1.9 Oil Spill Modeling in the EIS Must Include Representative Sites on Enbridge’s Pipeline System Outside the Tioga-Superior Segment, Including Sites at a Variety of Terrains, Ecosystems, Water Bodies and Habitats Crossed by Enbridge’s System South and East of North Dakota

The direct effect of the Sandpiper Project and the L3R Project will be to increase the volumes of crude oil products being transported by Enbridge’s pipeline system. This includes not only the proposed project within

⁶⁴ See Ex. 10 (NAS Study of Spills of Diluted Bitumen).

⁶⁵ *Id.*

⁶⁶ *Id.* at viii, xiii.

⁶⁷ *Id.* at 3.

⁶⁸ L3R DSDD at 26, SPP DSDD at 28.

the borders of Minnesota, but the entirety of Enbridge's system south and east of North Dakota. The higher volumes enabled by the two projects will continue on to refineries in the Midwest, Midcontinent, and Gulf Coast regions.⁶⁹ These higher volumes being transported throughout the U.S. will necessarily increase either the volumes or frequency of spills occurring on Enbridge's system outside Minnesota. As an illustration, the 2010 oil spill near Marshall, Michigan occurred on Enbridge's Line 6B, which connects to Enbridge's hub outside Chicago.⁷⁰ The Chicago hub is supplied in part by connections from Superior, Wisconsin.⁷¹ Both projects would therefore cause higher volumes of crude oil products to be transported through pipelines such as Line 6B, which accordingly increases the environmental impact of any oil spill that occurs, whether the location of that spill is within Minnesota or outside its borders. Any oil spill modeling in the EIS must therefore model potential spill sites at a variety of terrains, ecosystems, water bodies, habitats, High Consequence Areas and Natural Disaster Hazard Areas crossed by Enbridge's entire system south and east of North Dakota, not just those located in Minnesota.

3.1.10 Representative Sites Outside the Tioga-Superior Corridor Must Include Potential Worst Case Scenarios Such as a Line 5 Spill in the Straits of Mackinac

As described above, the increased capacities of the Sandpiper and L3R Projects will increase the volumes of crude oil products being transported by all of Enbridge's pipeline system, not just the segments proposed for Minnesota. From Superior, these increased oil volumes will be shipped southward and eastward on existing pipelines. One such pipeline that will connect with both Sandpiper and L3R is Enbridge's Line 5, which passes under the Straits of Mackinac, the waterway joining Lakes Michigan and Huron. The increased transportation volumes of both proposed projects will cause a corresponding increase in the risk of a spill outside Minnesota, including in Line 5. The potential impacts of a spill in the Straits of Mackinac has been studied and modeled by the University of Michigan's Water Center, and the results of that study should be incorporated in the both EISs as a means of analyzing the increased risks of such a catastrophic spill resulting from the higher pipeline volumes enabled by the two proposed pipelines.⁷²

3.1.11 The EIS Must Evaluate the Potential Impact of a Large or Small Volume Oil Release on the Trout Streams Crossed by the SPP Project

The Sandpiper Project EAW identifies six trout streams crossed by the applicant's preferred route.⁷³ The DSDD for the project, however, does not specify that the oil spill modeling will incorporate an analysis of the effects of an oil spill on these designated trout streams. The FSDD must indicate that the analysis of potential oil spill impacts will include the impacts of a large or small volume oil release on the designated trout streams and the habitat therein crossed by the project as proposed.

3.1.12 The EIS Must Evaluate the Environmental Impact of the Spacing and Locations of the Automatic Shutoff Valves Designed to Limit Oil Releases in the Event of a Rupture

The oil spill modeling incorporated into the EIS should evaluate the effect of the project's proposed locations of mainline valves capable of limiting releases in the event of a rupture. The modeling should also incorporate

⁶⁹ SPP DSDD at 6, Ex. 20; Direct Testimony of C. Michael Palmer, Docket No. PL-6668/CN-13-473, Aug. 8, 2014, at 7.

⁷⁰ Ex. 20 (Enbridge Pipeline Map).

⁷¹ *Id.*

⁷² Ex. 12 (University of Michigan Straits of Mackinac Oil Spill Study).

⁷³ SPP EAW at 107.

an analysis of alternate locations as an aid in assessing potential mitigation options, as alternate locations of mainline valves could be strategically placed to mitigate impacts to particularly sensitive environments.⁷⁴

3.1.13 The EIS Must Evaluate the Environmental Impact of Oil Spills with Ignition

As described in the Direct Testimony of Paul Stolen, oil spill modeling must incorporate the potential effects of an oil spill with ignition. Neither DSDD in this matter specifies that the oil spill modeling will incorporate the increased environmental impacts of an oil spill featuring ignition of a pool fire, flash fire, or vapor cloud explosion.⁷⁵ Bakken crude is known to be particularly volatile, and poses a significant risk of ignition upon release.⁷⁶ The effects of such spills have been evaluated and quantified by studies conducted by federal agencies, and given the DSDD's statements that the oil spill modeling will be conducted in accordance with federal PHMSA regulations,⁷⁷ the effects of oil spills with ignition must be included in the EIS.

3.1.14 The EIS Must Evaluate a Catastrophic Oil Spill Scenario in Which a Large Oil Spill with Ignition Damages Co-Located Pipelines

Environmental review principles require the evaluation of low probability, high-risk environmental impacts. Such impacts for the Sandpiper Project and the L3R Project would include a catastrophic oil spill with ignition, in a sensitive area, in which co-located pipelines are also damaged, increasing the volume of the release. Neither DSDD requires the modeling of such a scenario, and is therefore inadequate in assessing the likelihood and the impacts of such an event. The FSDD must require modeling for catastrophic scenarios, even those that are low probability, because the consequences would be so severe. Such consequences are unaccounted for in the EIS as currently scoped.

3.1.15 The EIS Must Evaluate the Potential for Groundwater Contamination by a Large or Small Volume Oil Release

The DSDDs for the two projects state that the EIS will analyze the potential for groundwater contamination within 1,000 feet of the pipeline corridor.⁷⁸ This boundary is based on “work done previously in Exponent’s risk assessment of the Keystone XL Pipeline.”⁷⁹ Although reliance on previously completed work is allowed by state environmental review regulations,⁸⁰ that work must be relevant to the current project. To the extent that the groundwater contamination modeling incorporated into the EIS for SPP and L3R is based on particular mixes of petroleum products that are unique to the Keystone XL proposal, or the terrain on which that pipeline was proposed, that modeling may not accurately represent the risks to groundwater posed by the SPP and L3R projects. Different crude oil products may pose different risks upon release into surface waters or onto permeable soils. The particular risks to groundwater posed by the transport of Bakken light sweet crude and diluted bitumen on SPP and L3R, respectively, must be independently evaluated in the EIS. That analysis should also include specific information about the aquifers crossed by the proposed projects,

⁷⁴ See Ex. 16 at 27 (Stolen Direct).

⁷⁵ See *Id.* at Ex. A, 86-87.

⁷⁶ PHMSA Safety Alert, January 2, 2014, *Preliminary Guidance from Operation Classification*, available at http://phmsa.dot.gov/pv_obj_cache/pv_obj_id_111F295A99DD05D9B698AE8968F7C1742DC70000/file_name/1_2_14%20Rail_Safety_Alert.pdf, last retrieved May 24, 2016.

⁷⁷ L3R DSDD at 26, SPP DSDD at 27.

⁷⁸ SPP DSDD at 28.

⁷⁹ *Id.*

⁸⁰ See, e.g., Minn. R. 4410.2200; 4410.2400.

particularly shallow groundwater aquifers that may be especially vulnerable to contamination by large or small volume releases.

3.1.16 The EIS Must Analyze the Probability and Impacts of Small Leaks with an Unusually Long Detection Period

The DSDDs for the two pipelines indicate that the impacts of pinhole leaks will be assessed based on the assumption that a small volume leak would be detected within a matter of “several months.”⁸¹ The proposed projects, however, cross a significant acreage of remote and inaccessible areas, and it is therefore possible that a small leak would remain undetected for a longer period of time than assumed in the EIS as currently scoped. A small leak underneath a river bed could pose an especially damaging risk of evading detection for longer than “several months.” The probability and impacts of such an event must be analyzed in the EIS.

3.1.17 The Oil Spill Analysis Must Evaluate the Potential Impacts of an Oil Spill Occurring During Winter Conditions, Including Under Ice

Minnesota’s climate present unique obstacles in oil spill response and recovery. Access to a spill site can be severely restricted or prohibited in winter conditions, particularly if the location of the rupture is beneath ice cover. Montana’s experience with the spill into the Yellowstone River in January 2015 was only one example of this problem. In that case, over 40,000 gallons of crude spilled into the river, and groundwater was contaminated while cleanup was hindered due to ice on the river. Any oil spill analysis included in the EIS must assess the probability and risks of an oil spill occurring during the winter months, including the possibility that the volumes of released oil would be affected by diminished access to the site during the response time.

3.2 ‘Upstream’ Environmental Impacts of Increased Crude Extraction at Production Sites

3.2.1 The Environmental Impacts of Increased Crude Extraction in the Williston Basin, Including But Not Limited To Methane Leakage, Ethane Leakage, Air Quality Impairments and Ground, Surface and Drinking Water Contamination Must be Analyzed as Impacts of the Sandpiper Pipeline Proposal

A new crude oil pipeline can make a difference to suppliers of crude oil, as well as refiners and other users. Indeed, a large crude oil pipeline can change the face of the crude oil market across the nation. It can increase both supply and demand for crude oil. That, of course, is why NDPC wishes to build it. But changing the face of the crude oil market has consequences, and many of those are environmental.

An EIS must include “a thorough but succinct discussion of potentially significant adverse or beneficial effects generated, be they direct, indirect, or cumulative.”⁸² If the Sandpiper and Line 3 pipelines cause increased production of Bakken oil and/or tar sands oil in Canada, the two products they will carry, then that is surely an indirect adverse impact of the pipeline under MEPA.

As described in Dr. Gunton’s report, the increased pipeline capacity provided by the Sandpiper Proposal will increase the pace of extraction in the Williston Basin, reversing recent declines caused by low oil prices and limited pipeline transportation availability. With the new, cheaper pipeline capacity of Sandpiper coming

⁸¹ SPP DSDD at 28; L3R DSDD at 26.

⁸² Minn. R. 4410.2300(H).

online, individual wells' break-even points will be lowered, and Bakken production volumes will begin to increase once again, even in a continued low oil price market. Well producers' investment decisions are based on current oil prices and the costs of production, of which transportation costs are a significant portion. Lowering these transportation costs will of course change those investment decisions, leading to more wells and more extraction by hydraulic fracturing. The federal courts have made clear that NEPA requires an EIS to consider the increased production (and ultimately consumption) that is the direct result of lowered transportation costs for fossil fuels.⁸³ This increased extraction activity carries a significant environmental footprint, all of which is currently ignored in the Sandpiper DSDD.

Bakken crude is a tight oil resource recovered by hydraulic fracturing techniques. These techniques have a variety of well-known and well-documented environmental impacts, including methane and ethane leakage, air quality impairments, and ground, surface and drinking water contamination.⁸⁴ These impacts significantly affect global climate change, human health, water quality and wildlife, but none are included for analysis in the EIS.

3.2.2 The Environmental Impacts of Increased Oils Sands Extraction in the Alberta Oil Sands Region, Including But Not Limited To: Emissions of Polycyclic Aromatic Hydrocarbons to the Air, Water and Soil; Air Quality Impairments; Adverse Effects on Wildlife and Habitats; and Ground, Surface and Drinking Water Contamination Must be Analyzed as Impacts of the L3R Proposal

As described above, the increased pipeline capacity provided by the L3R Proposal will increase the pace of extraction in the Alberta Oil Sands Region. The Line 3 replacement doubles the capacity of the line, resulting in over 300 bpd additional crude oil shipped out of the tar sands region. Moreover, the EIS must compare the effects of the project to the “no action” alternative. In this case, presuming that the existing Line 3 is no longer financially viable, then the “no action” alternative would be to retire the existing Line 3, but not replace it. In that case, the impact of the proposed Line 3 is the entire volume of tar sands at 750 bpd. The EIS must compare 750 bpd shipped out of the tar sands region on Line 3 to zero bpd.

⁸³ *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003) (“But the proposition that the demand for coal will be unaffected by an increase in availability and a decrease in price, which is the stated goal of the project, is illogical at best. The increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utilities market when compared with other potential fuel sources, such as nuclear power, solar power, or natural gas”).

⁸⁴ See EA Kort, ML Smith, LT Murray, A Gvakharia, AR Brandt, J Peischl, TB Ryerson, C Sweeney, and K Travis, *Fugitive Emissions from the Bakken Shale Illustrate Role of Shale Production In Global Ethane Shift*, *Geophys. Res. Lett.*, 43, doi: 10.1002/2016GL068703; J Peischl, A Karion, C Sweeney, EA Kort, ML Smith, AR Brandt, T Yeskoo, KC Aikin, SA Conley, A Gvakharia, M Trainer, S Wolter, and TB Ryerson, *Quantifying Atmospheric Methane Emissions from Oil and Natural Gas Production in the Bakken Shale Region of North Dakota*, *J. Geophys. Res.*, May 11, 2016, available at <http://onlinelibrary.wiley.com/doi/10.1002/2015JD024631/abstract>, last retrieved May 12, 2016; Joshua P. Schwarz, John S. Holloway, Joseph M. Katich, Stuart McKeen, Eric A. Kort, Mackenzie L. Smith, Thomas B. Ryerson, Colm Sweeney, and Jeff Peischl, Black Carbon Emissions from the Bakken Oil and Gas Development Region, *Environmental Science & Technology Letters*, 2015; NE Lauer, JS Harkness, and A Vengosh, *Brine Spills Associated with Unconventional Oil Development in North Dakota*, *Environmental Science & Technology*, April 27, 2016, available at <http://pubs.acs.org/doi/abs/10.1021/acs.est.5b06349>, last retrieved May 12, 2016;

With the doubled pipeline capacity of a new Line 3 coming online, individual production projects' break-even points will be lowered, and production volumes will accelerate, even in a continued low oil price market.⁸⁵ Production projects in the oil sands region are based on current oil prices and the costs of production, of which transportation costs are a significant portion. Lowering these transportation costs will of course change those investment decisions, leading to more extraction and ultimately more consumption. The federal courts have made clear that NEPA requires an EIS to consider the increased production (and ultimately consumption) that is the direct result of lowered transportation costs for fossil fuels.⁸⁶ This increased extraction activity carries a significant environmental footprint, all of which is currently ignored in the L3R DSDD.

The environmental impacts of oil sands extraction and processing have been documented for decades. Primarily, those impacts are: (1) impacts on water quality from waste water releases; (2) water quality impacts from water withdrawal and use; (3) greenhouse gas emissions, (4) air pollutants (including SO_x, NO_x, volatile organic chemicals such as polycyclic aromatic hydrocarbons, and particulate emissions), (5) tailings disposal, and (6) land disturbances, including habitat fragmentation or destruction.⁸⁷

3.3 “Downstream” Impacts of Increased Petroleum Production, Transport and Use.

3.3.1 The EIS Should Examine the Impacts of Increased Bakken and Tar Sands Petroleum Use.

Federal courts have held that increased production from a new transportation corridor is an indirect impact that must be analyzed under MEPA.⁸⁸ In one case, a rail company sought to build a new rail line from the coal mines of Wyoming's Powder River Basin to service power plants in Minnesota.⁸⁹ At the Eighth Circuit, the Sierra Club argued that the rail line would increase the emissions of various noxious pollutants by increasing access to the low-sulfur coal. The Surface Transportation Board, which prepared the EIS, argued that its new rail line would not affect the demand for coal, but the court found this unlikely, as the stated purpose of the project was to increase availability and decrease the price of Powder River Basin coal. The rail company also argued that any such impact was too speculative to be determined, but the court also dismissed this argument. It held that increased use and access to low-sulfur coal fall under “indirect effects” that must

⁸⁵ Ex. 6 at ES-12 (Keystone XL SEIS Executive Summary) (noting that increased pipeline capacity will increase oil sands production in a low oil price market).

⁸⁶ *Mid States Coalition for Progress*, 345 F.3d at 549 (“But the proposition that the demand for coal will be unaffected by an increase in availability and a decrease in price, which is the stated goal of the project, is illogical at best. The increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utilities market when compared with other potential fuel sources, such as nuclear power, solar power, or natural gas”).

⁸⁷ Council of Canadian Academies, *Technological Prospects for Reducing the Environmental Footprint of Canadian Oil Sands: Executive Summary*, 2015, available at <http://www.scienceadvice.ca/uploads/ENG/AssessmentsPublicationsNewsReleases/OilSands/OilSandsExecSummEn.pdf>, last retrieved May 12, 2016; A Parajulee and F Wania, *Evaluating officially reported polycyclic aromatic hydrocarbon emissions in the Athabasca oil sands region with a multimedia fate model*, March 4, 2014, PNAS 111: 3344-3349.

⁸⁸ MEPA is modeled on the National Environmental Policy Act, and Minnesota state courts often turn to federal courts for guidance on interpreting MEPA. See, e.g., *Minnesota Center for Environmental Advocacy v. Minnesota Pollution Control Agency*, 644 N.W.2d 457, 468 n.10 (Minn. 2002) (noting that NEPA is similar to MEPA in their primary procedural requirements, and that “therefore looking to federal case law is appropriate and helpful in this case.”).

⁸⁹ *Mid States Coalition for Progress*, 345 F.3d at 520.

be analyzed under NEPA. Even if the *extent* of the impact is uncertain, the *nature* of the impact is not, and therefore it must be analyzed with as much detail as possible.⁹⁰

Similarly, in this case, the EIS must include the indirect impacts of increased usage of crude oil from both the Bakken associated with Sandpiper, and the tar sands, associated with Line 3. While it may be difficult if not impossible to predict the precise uses of the crude oil shipped via the proposed Sandpiper and Line 3 pipelines, it is possible to make rough estimates. MEPA requires such calculations even where there is some uncertainty.⁹¹ For instance, the EPA has determined that carbon dioxide emissions per barrel of crude oil may be analyzed using a formula of “heat content times the carbon coefficient times the fraction oxidized times the ratio of the molecular weight of carbon dioxide to that of carbon (44/12).”⁹² Using this formula, the EPA calculated that the average carbon emissions per barrel of crude oil in the U.S. is 0.43 metric tons CO₂. The EIS could likely provide a more refined analysis specific to Bakken and tar sands crude oils. Similar calculations could also be performed for other pollutants from refining crude oil.

3.3.2 The EIS Should Examine the “Downstream” Impact of Increased Impacts of Increased Crude Oil Transport.

Increasing the volume of oil shipped into Superior, Wisconsin will increase the volume of oil shipped out of Superior, Wisconsin to other refineries, especially in the Chicago area and lower Midwest. In the now-defunct Certificate of Need proceedings for the Sandpiper Pipeline, Marathon Petroleum made no secret of the fact that Superior, Wisconsin was not the final destination for the Bakken crude to be shipped on the Sandpiper. The same is certainly true for the oil on Line 3, as the refining capacity in Superior, Wisconsin is already greatly exceeded by the volume of oil coming in. All of that oil will need to be shipped elsewhere, either by pipeline, train or truck.

As a result of increased volume of oil arriving in Superior, the following indirect impacts may occur:

- New pipelines may need to be built;
- Existing pipelines may need to be expanded;
- Additional oil may be shipped on aging pipelines, resulting in increased pressure;
- Additional oil may be shipped on aging pipelines, resulting in prolonged life for those pipelines and increased risk of spill;
- Increased rail or truck traffic carrying crude oil out of Superior, Wisconsin.

There may be other indirect impacts that we have not identified here. All of these impacts are “indirect” impacts under MEPA, and must be analyzed.

When analyzing these impacts, NDPC’s preferred route must be compared with similar indirect impacts of the system alternatives. SA-04 and SA-05 were proposed by FOH in part because those proposed alternatives terminate closer to the refineries that are the final destination for the oil, at least in the case of Sandpiper.

In addition, when analyzing Line 3, the EIS should compare the indirect impacts to the “no-action alternative” of not replacing Line 3. If the oil currently shipped on Line 3 is no longer shipped to Superior,

⁹⁰ *Id.* at 549-550.

⁹¹ Minn. R. 4410.2500.

⁹² U.S. EPA, *GHG Equivalencies Calculator – Calculations and References*, <https://www.epa.gov/energy/ghg-equivalencies-calculator-calculations-and-references>, last accessed May 24, 2016.

Wisconsin, then the indirect impacts may include retirement of existing pipelines out of Superior, WI; less utilization of existing pipelines out of Superior, WI; less rail or truck traffic out of Superior; etc. The impact of replacing Line 3 is to avoid those potentially advantageous outcomes.

3.4 Environmental Impacts of Pipeline Construction

3.4.1 The EIS must analyze the construction and permanent "footprints" of the two projects on the differing landscapes crossed by the proposed pipelines and not rely on Enbridge's estimates and descriptions

Construction of pipelines has both temporary and permanent impacts. Permanent impacts are caused by removal of, for example, forest vegetation over the permanent right of way for the project life. This in turn causes other impacts, including impacts to wildlife or of increased runoff. Another important potential permanent or long-term impact is from topsoil mixing over the trench or on side-hill cuts needed to construct the 50-60 foot wide flat work area needed for pipe installation. This results in, for example, increased erosion on hillsides, sediment reaching streams, and invasion of exotic species of plants. Other long term impacts include forest removal on hilly terrain outside of the permanent right-of-way that is needed for spoil storage and ROW needs during construction.

In addition, even temporary impacts must be accurately characterized in the EIS to assess impacts. The temporary area needed for pipeline construction in hilly terrain is much wider than that needed in flat terrain. Normally, the affected area in flat terrain can be limited to a 100-120 foot width for one pipeline. On hilly terrain, the temporary ROW can be as much as 350-400 feet in width, requiring extensive forest clearing in forested areas.

The EIS should independently analyze:

- The temporary and permanent size of the construction zone needs--the "footprint"--on flat terrain vs. hilly terrain.
- The geographic extent of topsoil mixing and over the trench and on side-hill cuts and on temporary and permanent access roads for these scenarios: 1) the Applicant's proposal to only separate topsoil in agricultural areas and leave the rest up to landowner desires; 2) the geographic extent of topsoil mixing if the Applicant's permit--if eventually given--requires topsoil separation on all locations over the trench and where there are side-hill cuts deeper than the topsoil (where topsoil is potentially lost by burial in parent material).
- The impacts of topsoil loss to burial in substrate based on the estimates of geographic extent cited above.
- The increases in ROW width due to topsoil separation in hilly terrain vs. flat terrain.
- The pros and cons of constructing the two pipelines at the same time, should they eventually be permitted.
- The pros and cons of winter construction on wetlands and uplands, including the difficulties in topsoil separation and replacement on frozen ground.
- The specific extent of land clearing and pipeline separation from existing pipelines and other linear facilities, and the extent to which the two new pipelines will or will not be able to maintain the 25 foot separation proposed by the Applicant. This will provide a more objective and accurate indication of the width of the expanded pipeline corridor. Such information is crucial to the analysis

of other impacts such as to wildlife and the cumulative impacts of adding pipelines. It is also crucially needed to determine whether the Applicant's portrayal of following existing corridors is accurate or reasonable. Due to many obstacles as additional pipelines have been added to the existing pipeline corridors, locating the new pipeline 25 feet from an existing pipeline is often not possible. Sometimes the new pipelines must cross over to the other side of the existing pipelines, or they must deviate from the existing pipeline corridor. The result is a much different actual on-the-ground impact than that indicated by the Applicant's limited environmental assessment.

3.5 Wetland Impacts

When analyzing the potential impacts of the project, the Commission should consider the purpose of the Wetland Conservation Act, which is to:

- A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- D. replace wetland values where avoidance of activity is not feasible and prudent.⁹³

Under Minnesota law, the project must be designed to prevent or avoid impacts on wetlands.

3.5.1 Impacts to Wetlands Due to Construction

Impacts to wetlands from construction are described as temporary, but the EIS should analyze whether that is the case. It is not enough to simply assume that because the soil is replaced, the wetland will be restored. It seems unlikely that sensitive wetlands can maintain their integrity when they are excavated, a pipeline put underneath, and then the materials put back. Previous pipeline projects through wetlands make this clear – once the construction is completed, the wetland has been permanently altered. Potential impacts to wetlands from construction include, but are not limited to:

- Some types of wetlands take decades or even centuries to form and cannot tolerate this type of treatment.
- Disturbance or destruction of wetlands is likely to present the opportunity for introduction of invasive plants, or loss of native plants.
- Disturbance is likely to change drainage patterns, which could cause wetlands to become drier or wetter. This could also have an indirect impact on nearby wetlands.
- Permanent impacts from spills of oil, gas, drilling fluid or other materials used during construction.

⁹³ Minn. R. 8420.0100, subp. 1.

3.5.2 The EIS Should Clarify Actual Impacts to Wetlands

Constructing the pipeline clearly would result in permanent impacts to wetlands, yet the EAW misleadingly claims that “only 1.0 acres would be permanently filled wetlands.” Sandpiper EAW, p. 90. Table 7-1 on p. 31 of the Sandpiper EAW similarly suggests that all wetland cover except for one acre will be maintained after construction. While only one acre may be permanently filled, there is no doubt that the other 958.2 acres will be altered, in many cases to be unrecognizable; a different type of wetland or even no longer wetlands at all. The EAW currently reads to suggest as if none of these wetlands will be permanently affected, let alone lost. The analysis should be refined to determine which acres will be permanently affected, and how.

3.5.3 The EIS Must Analyze the Effects of Oil Releases in Wetlands Including the Effects of Bitumen

The EIS must analyze the effects of an oil release on wetlands, including especially sensitive, high-value wetlands, and assess whether bitumen can ever be cleaned up from such wetlands. It must also analyze the destructive effects of the bitumen clean-up processes themselves. It should assess the long term consequences and costs of both the spill and clean-up efforts and the time frame for when such wetlands will return to their current condition, whether it be 10 years or 500 or more years. Examples of such wetlands are those in the LaSalle Creek/LaSalle Lake area, along the Mississippi River, and the Upper Rice Lake area.

3.6 Impacts on Aquatic Life, Including Habitat Loss

In addition to permanent changes to wetlands, pipeline construction may also cause permanent changes to habitat for aquatic plants and animals. Although potential impacts on fish and other aquatic life beyond the pipeline boundaries are addressed briefly in the EAWs under cumulative impacts, these are also direct impacts of the proposed pipelines.

3.7 Environmental Impacts of Surface Uses

3.7.1 The Proposed Consideration of the Impacts of Access Roads Necessary for Construction and Maintenance is Unreasonably Narrow

Although the DSDDs for both projects include access roads in their descriptions of the project, neither document gives any indication that the EIS will specifically include the environmental impacts of those roads. The new roads attract a variety of third party uses, including ATVs, motorbikes and snowmobiles, regardless of whether those uses are permitted by Enbridge or the state. The environmental impact of those uses are currently unaccounted for in the proposed scope of the EIS, which would therefore exclude consideration of impacts such as habitat fragmentation, soil erosion and compaction, poor air quality, aesthetic impairments, invasive species, turbidity impacts on designated trout streams and excessive noise. These impacts may be heightened by the intensity of the surface uses, which should therefore be analyzed in the EIS.

3.7.2 The Proposed Consideration of the Impacts of the Cleared Right of Way is Unreasonably Narrow

A cleared right of way produced by a pipeline project attracts a variety of third party uses, including ATV use and snowmobile use. These uses cause direct environmental impacts through soil compaction and erosion, and also pose a risk of interference with the pipeline itself, including the risk of rupture. This is particularly

acute where surface uses have the potential to erode soil cover above the pipeline, compromising the structural integrity of the pipeline itself. The EIS should consider the probability and intensity of such surface uses and evaluate the environmental impact of the increased surface activity resulting from the pipeline construction. These impacts include habitat fragmentation, soil erosion and compaction, poor air quality, aesthetic impairments, excessive noise, turbidity impacts on designated trout streams and the risk of compromised pipeline integrity or rupture.

3.7.3 The EIS Must Consider Impacts Resulting from Surface Clearance for the Impressed Current Cathodic Protection System

The proposed Sandpiper Project requires the construction of an impressed current cathodic protection system, which involves a 20-30 foot wide construction workspace 600 feet perpendicular to the pipeline.⁹⁴ The surface of this workspace must be routinely cleared of all woody plants. As noted in the sections above, these cleared areas attract a variety of third party uses, and the environmental impact of those uses must be evaluated in the EIS.

3.8 Potential for Failure of Mitigation Measures

3.8.1 Impacts Resulting from the Failure of Mainline Shutoff Valves

The Sandpiper Project and the L3R Project both propose to install mainline shutoff valves (21 for Sandpiper and 22 for L3R) that can be remotely controlled from the NDPC Control Center.⁹⁵ Although the DSDDs for the two projects both propose to include oil spill modeling in the EIS, neither document identifies any analysis of the potential impacts of failures in the mainline intelligent valve control system, despite the fact that federal data indicate equipment failures cause 32% of pipeline spills.⁹⁶ These impacts could be the result of faulty valve operation or failures in the communication system between the valve and NDPC's Control Center (such as by interference from solar magnetic storms),⁹⁷ either of which would potentially increase potential oil releases by an order of magnitude in the event of a rupture. The EIS must also indicate the significant limitations of mainline valve shutoff systems in an oil spill event, particularly that a rupture would typically allow the release of the entire volume of petroleum in the affected segment. Valve shutoffs have the potential to prevent further releases from the pipeline, but the EIS must clarify the minimum and maximum quantities that would be released in a rupture event, even assuming optimal mainline valve operation as well as mainline valve failure.

3.8.2 Impacts Caused by Corrosion Resulting from Failure or Inadequacy of the Cathodic Protection System

Cathodic protection is designed to protect the pipeline from the corrosive effects electrical currents induced in the pipeline by the earth's magnetic field or by stray AC or DC voltage interference. By directing the current to an anode, the cathodic protection system is intended to direct the corrosive effects to structures external to the pipeline itself, therefore protecting the pipeline integrity. The effectiveness of these cathodic

⁹⁴ SPP EAW at 27.

⁹⁵ SPP EAW at 12; L3R EAW at 25.

⁹⁶ Ex. 9 at 11 (Keystone XL SEIS Attachment K)

⁹⁷ See U.S. Dep't of Homeland Security, Industrial Control Systems Cyber Emergency Response Team, *Solar Magnetic Storm Impact on Control Systems*, March 26, 2011, available at <https://ics-cert.us-cert.gov/advisories/ICSA-11-084-01>, last accessed May 23, 2016.

protection systems must be evaluated in the EIS, including the probability and impacts of pipeline corrosion resulting from cathodic protection system failure. In 2012, for instance, a portion of TransCanada's newly built Keystone pipeline was discovered to be severely corroded, despite the presence of the same impressed current ground bed cathodic protection system proposed for the Sandpiper and L3R Projects.⁹⁸ The report investigating that incident found that "highly accelerated rates of corrosion on buried pipelines" can be caused by microbial activity, stray direct current interference, and stray alternating current interference.⁹⁹ The report notes that one source of AC current interference is induced current caused by electromagnetic interference in collocated right of ways.¹⁰⁰ Possible sources of this interference include existing pipelines collocated in the right of way (particularly "foreign" cathodic protection systems) and high voltage transmission lines in close proximity to the pipeline.¹⁰¹ High voltage transmission lines in particular have been studied as a likely source of pipeline corrosion, with one recent study concluding that "on pipelines suffering from A.C. interference traditional pipe-to-soil potential measurements do not guarantee efficient cathodic protection against corrosion."¹⁰² The incidences of pipeline corrosion investigated by the report "rais[ed] the possibility that the Cathodic Protection in some areas was inadequate and/or interference conditions were rendering the CP system ineffective and likely accelerating corrosion."¹⁰³ The DSDDs for the Sandpiper and L3R Projects give no indication that the environmental impacts of such corrosive activity will be analyzed, and is accordingly inadequate.

3.9 Phased and Connected Actions

3.9.1 The Line 3 and Sandpiper Pipeline EIS Should Also Cover Transmission Lines and Similar Related Actions.

The EIS should cover all related actions, including transmission lines. Confusingly, the notice for the Environmental Assessment of the Bull Moose Transmission Line Project and Clearbrook West Transmission Line Project have been noticed separately from the pipeline EISs, despite the fact that the transmission lines serve the applicant's proposed route for Sandpiper and Line 3.¹⁰⁴

The Commission is legally obligated to include all "phased and connected actions" in the EIS.¹⁰⁵ These phased and connected actions include new transmission lines necessary for the operation of the pipelines, all "associated facilities" mentioned in the EAWs, and any other related projects not yet defined that are in the same geographic area and are necessary to the operation of the pipelines.

Also, all phased and connected actions must be identified at the time of the Draft EIS. Analysis of these actions may not be put off until a later date. The EAW states that there may be additional transmission lines required that are not yet specified. Any additional transmission lines must be identified and the impacts analyzed as part of the Draft EIS.

⁹⁸ See Ex. 13 at 4 (TransCanada Keystone Corrosion Root Cause Report)

⁹⁹ *Id.* at 9.

¹⁰⁰ *Id.* at 11.

¹⁰¹ *Id.* at 32; Ex. 14 at 6 (AC Transmission Line and Corrosion Study).

¹⁰² Ex. 14 at 6 (AC Transmission Line and Corrosion Study)

¹⁰³ Ex. 13 at 31 (TransCanada Keystone Corrosion Root Cause Report).

¹⁰⁴ Ex. 15 (screen shot taken 5/9/2016).

¹⁰⁵ Minn. R. 4410.2000, subp. 4.

Even if the Commission were not legally obligated to include associated facilities and transmission lines, the Commission has the discretion to include these actions under the EIS as "related actions."¹⁰⁶ Putting these connected actions such as the transmission lines on separate tracks creates the appearance of bias because it looks as if the agency is proceeding with the applicant's preferred route by approving facilities that are only required to support the applicant's preferred route. This was the problem that arose when the Bull Moose and Clearbrook West Transmission lines were noticed simultaneously - but separately - from the Sandpiper and Line 3 EISs. There is no reason to approve the Bull Moose or Clearbrook West Transmission lines if NDPC's proposed pipelines do not proceed in NDPC's preferred location. Thus there is no reason to keep them on a separate track for environmental review. It creates the perception that the Commission intends to approve NDPC's proposed route, illegally presupposing the outcome of the EIS.

3.10 Cumulative Impacts

Minn. R. 4410.2300(H) states that an EIS shall include a discussion of potentially significant cumulative effects, which are defined by rule as

the impact on the environment that results from incremental effects of the project in addition to other past, present, and reasonably foreseeable future projects regardless of what person undertakes the other projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.¹⁰⁷

The Draft Scoping Decision Documents for the Sandpiper and L3R Projects identify a few cumulative impacts that will be discussed in the EIS, including cumulative impacts of collocating two pipelines in one right of way and the impacts of high-voltage transmission lines and substations needed to serve pipeline pump stations.¹⁰⁸ Aside from those two impacts, the DSDDs articulate a 'cumulative impact methodology' intended to identify existing or proposed projects that may interact with the Sandpiper or L3R Projects. One such project that is not identified in the scoping documents is Minnesota Pipe Line Company, LLC's Reliability Project for Line 4,¹⁰⁹ which proposes to install pump stations and other upgrades to an existing pipeline that receives crude oil from Enbridge's facilities in Clearbrook, MN.

A particularly notable omission from the draft scoping documents is any mention of the cumulative impacts of climate change. The pipelines proposed by the applicant have a projected lifespan measured in many decades, and within that time climate change will cause numerous, wholesale change upon the landscapes of Minnesota. Warmer temperatures and changes in precipitation patterns will reduce the extent of wetlands in our state, further exacerbating any wetlands impact caused by the proposed pipelines. Climate change may also affect river flows or soil cover through increased evapotranspiration or extreme precipitation events, respectively, which could in turn affect the appropriate burial depth for the pipeline in order to mitigate potential oil spills. Minnesota is especially vulnerable to increases in extreme weather events that have the potential to quickly scour soil cover protecting the pipeline from interference by surface uses.¹¹⁰ The FSDD

¹⁰⁶ Minn. R. 4410.2000, subp. 5.

¹⁰⁷ Minn. R. 4410.0200, subp. 11.

¹⁰⁸ SPP DSDD at 29.

¹⁰⁹ Docket No. PL-5/CN-14-320, *ORDER GRANTING CERTIFICATE OF NEED*, August 31, 2015.

¹¹⁰ Pryor, S. C., D. Scavia, C. Downer, M. Gaden, L. Iverson, R. Nordstrom, J. Patz, and G. P. Robertson, 2014: Ch. 18: Midwest. *Climate Change Impacts in the United States: The Third National Climate Assessment*, J. M. Melillo, Terese (T.C.) Richmond, and G. W. Yohe, Eds., U.S. Global Change Research Program, 418-440; Saunders, S., Findlay, D., Easley, T., Spencer, T. (2012). *Doubled Trouble: More*

should clarify that the EIS will discuss these cumulative impacts in addition to those identified by the DSDD and the implementation of the DSDD’s cumulative impact methodology.

3.11 Climate Change Impacts

Climate change impacts must be incorporated into the EISs for the proposed projects. Guidance from the Council on Environmental Quality states that “[c]limate change is a fundamental environmental issue, and the relation of Federal actions to it falls squarely within NEPA’s focus.”¹¹¹ Because the procedural requirements of MEPA hew so closely to those of its federal counterpart, any state-only EIS must also incorporate a full analysis of climate change impacts in an EIS.¹¹² The CEQ guidance further states that when addressing climate change, agencies should consider both “(1) the potential effects of a proposed action on climate change as indicated by its GHG emissions; and (2) the implications of climate change for the environmental effects of a proposed action.”¹¹³ As such, the EIS should quantify the greenhouse gas emissions that would result both directly and indirectly from the Sandpiper and L3R proposals and investigate how these emissions would affect the climate system.

Pursuant to the guidance, the acting agency should use “projected GHG emissions and when appropriate, potential changes in carbon sequestration and storage as the proxy” for potential climate change impacts.¹¹⁴ The EIS must quantify the greenhouse gas emissions that would be produced during construction of the pipeline facilities. These include direct emissions such as construction vehicle and machine usage, and open burn land clearing as well as indirect emissions from electricity use. Additionally, CEQ’s definition for emissions includes the “release of stored GHGs as a result of destruction of natural GHG sinks...as well as future sequestration capability.”¹¹⁵ Thus the EIS must quantify the loss of current and future carbon sequestration and storage from the clearing and destruction of forested areas and wetlands that would occur during construction of the Sandpiper and L3R projects.

As noted by the CEQ Guidance, per 40 CFR §§ 1508.7, 1508.8, agencies must consider cumulative (incremental), direct, and indirect effects when analyzing proposed actions.¹¹⁶ The guidance clarifies that acting agencies should account for “emissions from activities that have a reasonably close causal relationship to the Federal action” including emissions predicate to the agency action (upstream emissions) and emissions that occur as consequence of the agency action (downstream emissions).¹¹⁷ Emissions from the operation of facilities built for the two proposals should also be quantified. Additionally, as previously mentioned, Dr. Gunton’s report found that the Sandpiper and L3R pipelines will increase the pace of extraction in the Williston Basin by decreasing transportation costs for producers.¹¹⁸ This increase in extraction and production will produce further causally related downstream emissions that the EIS must quantify.

Midwestern Extreme Storms. The Rocky Mountain Climate Organization and the Natural Resources Defense Council.

¹¹¹ Ex. 21 (Council on Environmental Quality, *NEPA Revised Draft GFG Guidance*, 2 (Dec. 2014)).

¹¹² See *supra* note 80.

¹¹³ *Id.* at 3.

¹¹⁴ *Id.* at 8.

¹¹⁵ *Id.* at 1, 8.

¹¹⁶ *Id.* at 10; 40 CFR §§ 1508.7, 40 CFR §§ 1508.8.

¹¹⁷ *Id.* at 11; see also 40 CFR § 1508.8.

¹¹⁸ Ex. 1 at 8 (Expert Report of Dr. Gunton).

The guidance also acknowledges that climate change “can increase the vulnerability of a resource, ecosystem, human community, or structure, which would then be more susceptible to climate change and other effects and result in a proposed action’s effects being more environmentally damaging.”¹¹⁹ This makes the consideration of both climate change adaptation¹²⁰ and resilience¹²¹ especially critical when coupled with the considerations of environments already vulnerable to the specific effects of climate change.¹²² In addition to the previously mentioned impacts on wetlands the EIS must analyze, the EIS should analyze how climate change may directly affect wetlands and other vulnerable ecosystems or exacerbate other impacts resulting from the Sandpiper and L3R proposals. Such effects should be incorporated into the oil spill modeling results, so that the interaction between climate change and spill impacts may be more fully understood. Similarly, the EIS should incorporate the effects of climate change into its analysis of the Proposal’s impact on aquatic life.

SECTION 4: EIS FORMAT AND APPROACH

4.1 Cooperation With the Army Corps of Engineers

State law requires agencies to cooperate for the purposes of environmental review as much as possible. Under MEPA, the Commission “shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting.”¹²³ State agencies “shall...seek to strengthen relationships between state, regional, local and federal-state environmental planning, development and management programs.”¹²⁴

In this case, it appears that the Army Corps of Engineers will conduct environmental review as well, but NDPC has asked Army Corps to refrain from notifying the public at this time. The applicant should not be permitted to limit cooperation between state and federal agencies merely by requesting a delay in the federal agency’s processes. For all their concern about efficiency and timing, NDPC appears to be actively preventing cooperation between state and federal agencies that would “avoid duplication and ensure coordination.” Moreover, assuming that the Department and the Commission will be conducting additional pipeline EISs that also fall under Army Corps jurisdiction in the future, this would also appear to be a prime opportunity to “strengthen relationships” between state and federal agencies with overlapping jurisdiction. The Draft EIS should be performed in conjunction with the Army Corps of Engineers’ review under NEPA, or it should explain why such cooperation is not practicable.

4.2 Combining Sandpiper and L3R into a Single EIS

There should be a single EIS completed for the Sandpiper pipeline, Line 3, and all related actions, including associated facilities and transmission lines. It is not clear why the Department chose to scope Line 3 and Sandpiper separately, especially since the documents are duplicative, but there should not be a separate EIS for each project.

¹¹⁹ Ex. 21 at 22 (CEQ NEPA Revised Draft GFG Guidance).

¹²⁰ *Id.* at 23 n.52.

¹²¹ *Id.* at 23 n.53.

¹²² *Id.* at 24.

¹²³ Minn. Stat. § 116D.04, subp. 2a(d).

¹²⁴ Minn. Stat. § 116D.03.

First, the Commission ordered an EIS that covers both Line 3 and Sandpiper, not two separate EISs. In its order in the Line 3 docket, the Commission authorized the Department to “prepare a combined EIS to address issues related to both dockets in accordance with Minn. Stat. ch. 116D and Minn. R. ch 4410.” The Commission further clarified that it was authorizing a “combined environmental review of the need and routing dockets that considers the cumulative impact of the Sandpiper Pipeline Project and the Line 3 Project.”¹²⁵ Thus, the most natural reading of the Commission’s order is that the Department complete a single EIS for both projects, not two EISs.

Second, MEPA requires that the EIS for each project address the other project as a “phased and connected action.”¹²⁶ “Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EIS and in preparing the EIS.”¹²⁷ A “phased action” is defined as “two or more projects to be undertaken by the same proposer that a RGU determines...will have the same environmental effects on the same geographic area; and are substantially certain to be undertaken sequentially over a limited period of time.”¹²⁸ Two projects are “connected actions” if “one project would directly induce the other; one project is a prerequisite for the other and the prerequisite project is not justified by itself; or neither project is justified by itself.”¹²⁹ The proposed Sandpiper Pipeline and Line 3 are certainly phased actions. The record is not sufficiently developed to determine whether they are connected actions. In any event, in preparing the EIS, they should be treated as a single project under MEPA.

Third, a single EIS will avoid confusion and unnecessary burden on the public. When the public is asked to comment on two draft EISs for two pipelines proposed for a single corridor, it should be permitted to submit a single comment for both pipelines. The public should not be asked to comment separately on two pipelines as part of two different EISs.

Fourth, a single EIS will reduce the burden on the Department. If Sandpiper and Line 3 EISs are prepared separately, each EIS will need to address the other pipeline entirely.¹³⁰ MEPA requires that any project be analyzed in conjunction with other reasonably foreseeable actions.¹³¹ If each pipeline is analyzed separately, the EISs will still significantly overlap due to this requirement. It would be much more efficient simply to analyze them in a single document. Moreover, the Department will find itself responsible for sorting out which public comments should be applied to Sandpiper and which ones apply to Line 3. This process would

¹²⁵ Order Joining Need and Routing Dockets, *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*, Docket No. 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*, Docket No. PL-9/PPL-15-137, at 3.

¹²⁶ Minn. R. 4410.2000, subp. 4.

¹²⁷ *Id.*

¹²⁸ Minn. R. 4410.0200, subp. 60.

¹²⁹ Minn. R. 4410.0200, subp. 9c.

¹³⁰ Minn. R. 4410.2300(H) (“there shall be a thorough but succinct discussion of potentially significant adverse or beneficial effects generated, be they direct, indirect, or cumulative.”); Minn. R. 4410.2000, subp. 4 (connected actions and phased actions); Minn. R. 4410.0200, subp. 9c (defining “connected actions”); Minn. R. 4410.0200, subp. 60 (defining “phased action”); Minn. R. 4410.0200, subp. 11 (defining “cumulative impact”).

¹³¹ *Id.*

be both burdensome and fraught, as any comments incorrectly assigned (and therefore not addressed as the commenter intended) could form the basis for legal challenge.

Fifth, even if the Commission disagrees that it is required by law to order a single EIS, it has the discretion to do so, and it should exercise its discretion. An RGU may order a “related action EIS” – a “single EIS for independent projects with potential cumulative environmental impacts on the same geographic area if the RGU determines that review can be accomplished in a more effective or efficient manner through a related actions EIS.”¹³² Such an approach is certainly warranted here for the above-stated reasons.

4.3 Conducting a Tiered EIS

Where an agency must make consecutive decisions on a project, MEPA regulations permit an agency to conduct a tiered EIS:

An RGU may use a series of tiered EISs to fulfill environmental review requirements for an action where decisions on which alternative to select must be made in stages, progressing from the general to the specific. Prior to each decision which would eliminate from further consideration any alternatives under consideration, a tiered EIS must be completed which addresses the issues and alternatives relevant to the decisions to be made in that tier, at a level of detail appropriate to that tier. The level of detail in earlier tiers need not be as great as that in later tiers, provided that it is sufficient to reasonably inform decision makers of the significant environmental, economic, employment, and sociological impacts of the choices made in that tier.¹³³

A tiered EIS allows an agency to conduct an EIS on a limited number of alternatives relevant to a particular decision, then conduct a second process, more narrow, to a subsequent decision. The second stage may be “tiered” to the first stage, such that any analysis of environmental impacts conducted in the first stage need not be duplicated.¹³⁴

In this case, the first tier could address system alternatives - I.e., the location of the pipeline - and the second stage could address routing concerns. At the conclusion of the first tier, the Commission would make a determination on the preferred system alternative based on the criteria in MEPA. At the conclusion of the second tier, the commission would make a determination on the best route alternative(s) based on the criteria within MEPA.

This structure would avoid a host of potential issues. First, it would avoid the problem where the EIS analyzes 54 potential route alternatives for the applicant's preferred system alternative, but no route alternatives for other system alternatives. Not only would this be a lot of wasted work if the applicant's preferred route is not selected, it creates the appearance of bias because the agency has worked to refine the applicant's preferred alternative but not the other system alternatives.

Second, it avoids confusion to the public. Already this is expected to be a large EIS; encouraging public comment on particular alternatives at different stages will focus public comment and increase the quality of public participation. It allows the public to digest the proposal in smaller pieces.

¹³² Minn. R. 4410.2000, subp. 5.

¹³³ Minn. R. 4410.4000.

¹³⁴ *Id.* (“A tiered EIS may incorporate by reference material developed in an earlier tier.”).

Third, it fulfills the mandate of the Court of Appeals. The Court of Appeals was concerned, at least in part, about timing. MEPA specifically prohibits state agencies from granting permits or other approvals prior to completion of the EIS. Conducting the first tier of the EIS on system alternatives, then the certificate of need proceedings, complies with the timing requirements of the Court and is consistent with the provision permitted “tiered” EISs.¹³⁵

Finally, it is permissible under MEPA at the scoping stage. The RGU may change the form of an EIS “if circumstances indicate the need or appropriateness of an alternative form.”¹³⁶

Although this model seems ideally suited for the situation at hand, there are few, if any, examples of tiered EISs in Minnesota. FOH and MCEA suggest that if the Commission chooses this option, it should allow an additional comment period to allow the public and agencies assist in determining how to split up issues between the tiers.

4.4 Cardno/Entrix as Contractor

FOH and MCEA understand that the Department has hired Cardno/Entrix as its consultant for the EIS. Cardno Entrix has a direct conflict because it has worked for Enbridge Energy. Moreover, Cardno has a public record of preparing EISs for pipelines that underestimate environmental impacts.

While agencies are empowered to hire consultants to assist with preparation of an EAW or EIS under MEPA, any consultants hired should be independent and neutral. The primary purpose of MEPA is to provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project.¹³⁷ An EIS cannot serve that purpose if it is not prepared by an objective party.

Additionally, this Public Utilities Commission is responsible under MEPA for “verifying the accuracy of environmental documents.”¹³⁸ The Commission has made its own job much harder if it intends to rely on a contractor who has a conflict of interest.

Cardno Entrix has a history of working for government agencies while concealing a conflict of interest. Even worse, Cardno has a history of preparing documents that reveal its conflict of interest by failing to adequately evaluate the risks of the project. In 2010, Cardno Entrix was hired to prepare the EIS for the proposed Keystone XL pipeline. Notably, Cardno was hired at TransCanada’s recommendation.¹³⁹ The EIS was prepared and it appeared, as President Obama began his first term, that the pipeline was on the brink of approval:

Then the real bomb dropped: Cardno Entrix, the Houston (Tex.) company [the] State [Department] had contracted with to complete an environmental impact statement on Keystone—the substance of the evaluation Obama referred to—turned out to be a preexisting client of TransCanada and, as such, appeared to have a blatant conflict of interest. After several members of Congress requested a

¹³⁵ Minn. R. 4410.

¹³⁶ Minn. R. 4410.2100, subp. 7.

¹³⁷ Minn. R. 4410.0300, subp. 3.

¹³⁸ Minn. R. 4410.0400, subp. 1.

¹³⁹ “Pipeline Review Is Faced with Question of Conflict,” *New York Times*, Oct. 7, 2011, available at http://www.nytimes.com/2011/10/08/science/earth/08pipeline.html?_r=0, last accessed May 24, 2016.

review of the process, the inspector general was brought in to investigate and to establish new conflict of interest guidelines.¹⁴⁰

Although the inspector general ultimately concluded that Cardno was not unduly influenced by its association with TransCanada, the State Department hired a new contractor to conduct a supplemental EIS that was considered superior by many.

Ironically, one of the major failings of the Keystone XL Pipeline EIS prepared by Cardno was that it failed to address the potential impacts of a spill of diluted bitumen, the particular crude oil being shipped from Canada on the pipeline.¹⁴¹ But Cardno was one of the contractors hired to clean up the spill in Kalamazoo, so it should have had unique knowledge of the challenges.

And herein lies the problem for the Sandpiper and Line 3 EIS. Even a quick google search reveals that Cardno Entrix has recently or is currently working for Enbridge on the Kalamazoo River cleanup.¹⁴² FOH has requested documents from Department regarding Cardno Entrix and the search for conflicts that the Department may or may not have undertaken. We have not yet received the requested documents. But as one NEPA expert put it:

“Cardno Entrix should never have been selected to perform the environmental study on Keystone XL because of its relationship with TransCanada and the potential to garner more work involving the pipeline. The company provides a wide range of services, including assisting in oil spill response.”

Cardno Entrix had a “financial interest in the outcome of the project,” Mr. Houck said, adding, “Their primary loyalty is getting this project through, in the way the client wants.”¹⁴³

In any event, the Commission should be extremely wary of a contractor with a blatant conflict of interest who has already been exposed once for preparing an inadequate EIS in favor of the industry it serves.

5.0 SPECIAL STUDIES OR RESEARCH

5.1 Socioeconomic and Environmental Impacts on Homeowners From the Use of Eminent Domain and the Construction of Pipelines and Related Facilities on Private Property

When a pipeline is permitted by the Public Utilities Commission, the pipeline company has virtually limitless ability to install the pipeline and associated facilities on private property. Minnesota law states that transporting crude oil via pipeline is “declared to be in the public interest and necessary to the public welfare, and the taking of private property therefore is declared to be for a public use and purpose.”¹⁴⁴ The legislature

¹⁴⁰ “Secrets, Lies, and Missing Data: New Twists in the Keystone XL Pipeline,” *Bloomberg Businessweek*, July 12, 2013, available at <http://www.bloomberg.com/news/articles/2013-07-11/secrets-lies-and-missing-data-new-twists-in-the-keystone-xl-pipeline>, last accessed May 24, 2016.

¹⁴¹ “Pipeline Review is Faced with Question of Conflict,” *supra* note 112.

¹⁴² The project is discussed on Cardno’s website at <http://www.cardno.com/en-au/Projects/Pages/Projects-Kalamazoo-River-and-Talmadge-Creek-Restoration.aspx>, last accessed May 24, 2016.

¹⁴³ “Pipeline Review is Faced with Question of Conflict,” *supra* note 112.

¹⁴⁴ Minn. Stat. § 117.48.

has further declared that any pipeline company “shall have and enjoy the power of eminent domain to be exercised in accordance with this chapter.”¹⁴⁵

Some of the risks posed by pipelines on private property are different than on public property. The following is a non-exhaustive list of potential impacts on private property:

- Loss of value of land from pipeline easements
- Cumulative loss of value of land from multiple pipeline easements (i.e. multiple pipelines, or pipelines plus transmission lines)
- Impacts on crop production and quality of farm land
- Displacement of buildings, including homes

While NDPC may argue that they are compensating landowners for these impacts, the EIS should investigate whether landowners are adequately compensated. In addition, impacts on farmland production and value have a public as well as a private cost that must be analyzed.

If there are questions about landowner compensation raised by the EIS, the PUC may wish to consider restrictions on the use of eminent domain as well as alternate strategies for compensation of crop damage.

CONCLUSION

For the foregoing reasons and in accordance with state and federal law, FOH and MCEA respectfully request that the final scoping documents for the Sandpiper Pipeline and the Line 3 Replacement Project incorporate the suggestions contained herein.

¹⁴⁵ *Id.*; see also Minn. R. 7852.3200 (“After an applicant is issued a pipeline routing permit...the permittee may exercise the power of eminent domain as provided by Minnesota Statutes, section 117.48.”).

**Evaluation of Minnesota Draft Scoping Decision Document for
Sandpiper Pipeline Project**

**Dr. Thomas Gunton
Director, Resource and Environmental Planning Program
Simon Fraser University**

James Hoffele

**Research Associate
School of Resource and Environmental Management
Simon Fraser University**

May 25, 2016

1. Introduction

The purpose of this report is to comment on the Draft Scoping Decision Document (DSDD) prepared by the Minnesota Department of Commerce (MDOC) for the Sandpiper Pipeline Project (the Project). We begin by providing an overview of the Project and a brief description of the proponent's justification and rationale for the Project. In our discussion of need for the Project, we assess whether the stated purpose of the Project of shipping oil to an endpoint in Superior, Wisconsin is appropriate and whether other transportation projects that ship Bakken oil to other locations should be considered as alternatives to the Project. The implications of major changes in oil markets since 2014 (principally the decline in the price of crude oil and the prospect of new pipelines coming online in the near future) are analyzed. Finally, additional social, economic, and environmental impacts that should be addressed in the Environmental Impact Statement (EIS) for the Project, but are not referenced in the DSDD, are identified.

2. Overview of Sandpiper Project

The Sandpiper Project is a proposed 616-mile oil pipeline to be constructed and operated by North Dakota Pipeline Company LLC (NDPC), a joint venture between Enbridge Energy Partners, L.P. and Williston Basin Pipe Line LLC, a subsidiary of Marathon Petroleum Corporation. The Project would transport 225 thousand barrels per day (kbpd) of crude oil from Beaver Lodge Station, south of Tioga, North Dakota, to a new terminal facility at Clearbrook, Minnesota via a 24-inch pipeline. From Clearbrook, the pipeline would transport 375 kbpd of Bakken crude oil a distance of 229 miles and terminate at a terminal and tank farm in Superior, Wisconsin. The Bakken crude can then be carried via the Enbridge Mainline for delivery to refineries in the Midwest and Eastern Canada. If approved, the Project will also include construction of a new oil terminal with two 150,000-barrel tanks and pump station near the existing terminal and storage tanks in Clearbrook as well as pipeline inspection gauge launcher and receiver types and mainline valve facilities at Pine River, Minnesota.

In August 2015, the Minnesota Court of Appeals ruled that Sandpiper requires a full EIS before the state can grant a certificate of need. The state's Public Utilities Commission had authorized Sandpiper without an EIS. This has delayed the proposed start-up date of the Project to 2019.

3. Rationale for Sandpiper

The rationale for the Sandpiper Project provided in the application and testimony of Paul Eberth,¹ Michael Palmer,² and Neil Earnest³ includes the following points:

- Sufficient market demand exists for the crude oil to be delivered by Sandpiper.
- Sandpiper will operate at, or close to, capacity throughout the forecast period (2016 to 2035).
- Shipper commitments for 155 kbpd of the capacity on Sandpiper indicate demand for the Project and supports commercial viability of the Project.
- Sandpiper's transport of crude oil to the Midwest and Eastern Canada markets will displace rail transportation, which is generally more costly and less efficient than pipeline transportation.
- Improved market access and lower transport costs provided by Sandpiper would provide Bakken producers with pre-tax economic benefit of approximately \$5 billion over the forecast period.

4. Assessment of Need for Sandpiper

In this section, the rationale and need for the Project are assessed. This assessment shows that there are significant issues regarding the DSDD's treatment of the project's need and rationale.

4.1 Purpose of the Project

The foremost deficiency associated with the assessment of the need for Sandpiper is the unreasonably narrow stated purpose of the Project. The DSDD states, "[t]he alternative must meet the underlying purpose of the project."⁴ The DSDD adopts the proponent's definition of the Project from a public notice issued in June 2013, which is "to transport growing crude oil production from the Bakken Formation in North Dakota to the Superior, Wisconsin, terminal and

¹ See Direct Testimony of Paul Eberth on behalf North Dakota Pipeline Company LLC, MPUC Docket No. PL-6668/CN-13-473, August 8, 2014.

² See Direct Testimony of C. Michael Palmer on behalf North Dakota Pipeline Company LLC, MPUC Docket No. PL-6668/CN-13-473, August 8, 2014.

³ See Direct Testimony of Neil Earnest on behalf North Dakota Pipeline Company LLC, MPUC Docket No. PL-6668/CN-13-473, August 8, 2014.

⁴ MDOC 2016, p. 6.

then connect to various other pipelines expanding access to refinery markets in the US Midwest and beyond.”⁵

This definition of the purpose of the Project does not capture the Project's broader reason for being proposed, which is to transport Bakken oil to viable market destinations. By using the narrow definition of specifying Superior as a destination for Bakken oil shipments as the Project's purpose, other viable transportation alternatives that meet Sandpiper's primary objective of transporting Bakken oil to markets may be omitted from consideration.

Currently, Bakken oil is also shipped south of the Williston Basin via pipelines and rail in addition to the North Dakota Pipeline System that carries crude east to Clearbrook and then to Superior, Wisconsin. For example, the Bridger, Butte, and Belle Fourche pipelines serve refineries in Cheyenne, Wyoming, and Denver, Colorado. Further, the Palermo Rail Terminal project, designed to have an initial capacity of 100 kbpd with the flexibility to be expanded to 200 kbpd, will have direct access to the Sacagawea Pipeline and facilitate access to the East and West Coast once construction is completed. There are alternative routing options available for transporting Bakken oil to markets that do not include Superior. Therefore, the DSDD should require that the assessment of the Project take into account all current, proposed, and planned Bakken oil transportation capacity capable of shipping Bakken oil to markets instead of relying on a narrow definition of market access that excludes viable options.

Second, existing and planned Bakken transportation capacity must be compared to forecasted Bakken oil shipments in the assessment of need and rationale for the Project. A comprehensive analysis of the supply and demand for Bakken oil transportation services is essential to assess the need for Sandpiper, the existence of reasonable and prudent alternatives to Sandpiper, and whether the consequences of approving Sandpiper are more favourable than not approving it. This analysis of supply and demand for Bakken oil transportation services should be included in the Special Studies referenced in the DSDD,⁶ but most critically, the results of this analysis must inform the selection of alternatives analyzed in the EIS, including the No Action Alternative.

The data on Bakken supply and demand for transportation services show why a comprehensive supply and demand analysis of Bakken transportation capacity is important. Current transportation capacity in the Bakken region exceeds oil production, and this gap is

⁵ MDOC 2016, p. 6.

⁶ MDOC 2016, p. 30.

expected to grow (Table 1). Even if rail capacity is excluded, there is still expected to be surplus transportation capacity of between 516 and 866 kbpd in 2020. If rail is included, the surplus capacity could exceed 2,400 kbpd.

While some degree of surplus capacity is inevitable as new pipeline projects come into operation and is beneficial to provide some degree of flexibility in the oil transportation system, the forecast surplus capacity if all projects are built is excessive: it is equivalent to about ten Sandpiper projects of unused capacity. Surplus capacity, on Sandpiper or other pipelines serving the Bakken, could impose a significant cost on the oil sector and on economies of the states the pipeline traverses, like Minnesota. Clearly not all proposed projects are needed or prudent and an evaluation of all the alternatives is necessary to determine whether Sandpiper is needed and the negative consequences of approving Sandpiper in terms of contributing to surplus transportation capacity.⁷

Table 1. Oil Transportation Supply and Demand, Bakken Region

	2016 (kbpd)	2020 (kbpd)
Pipeline/Refinery Capacity	851	1,541
Sandpiper	0	225
Rail Capacity	1,590	1,590
All Transportation Total	2,441	3,356
Production (March 2016)	1,109	900 – 1,250
Surplus Transportation Capacity Without Rail	-258	516 – 866
All Surplus Transportation Capacity	1,332	2,106 – 2,456

Sources: North Dakota Pipeline Authority (NDPA) (2016a; 2016b); Kringstad (2016).

The evaluation of transportation alternatives to Sandpiper should be based on a comprehensive benefit cost analysis of each option that includes all economic, social and environmental costs. It is also important that the cost comparison of existing and proposed pipelines and rail capacity be based on the marginal cost of transporting Bakken oil. To do this, it is important to distinguish between variable cost and fixed cost. For existing projects, the

⁷ The proponent states that they have shipper contracts for Sandpiper that will ensure Sandpiper capacity is used. The likelihood of fulfillment of these contractual obligations depends on the terms of the contracts, which should be assessed in the project review. However, even if the contracts ensure Sandpiper is used, the costs of surplus capacity created by Sandpiper will still exist and will be imposed on other shippers who will lose the shipments diverted to Sandpiper.

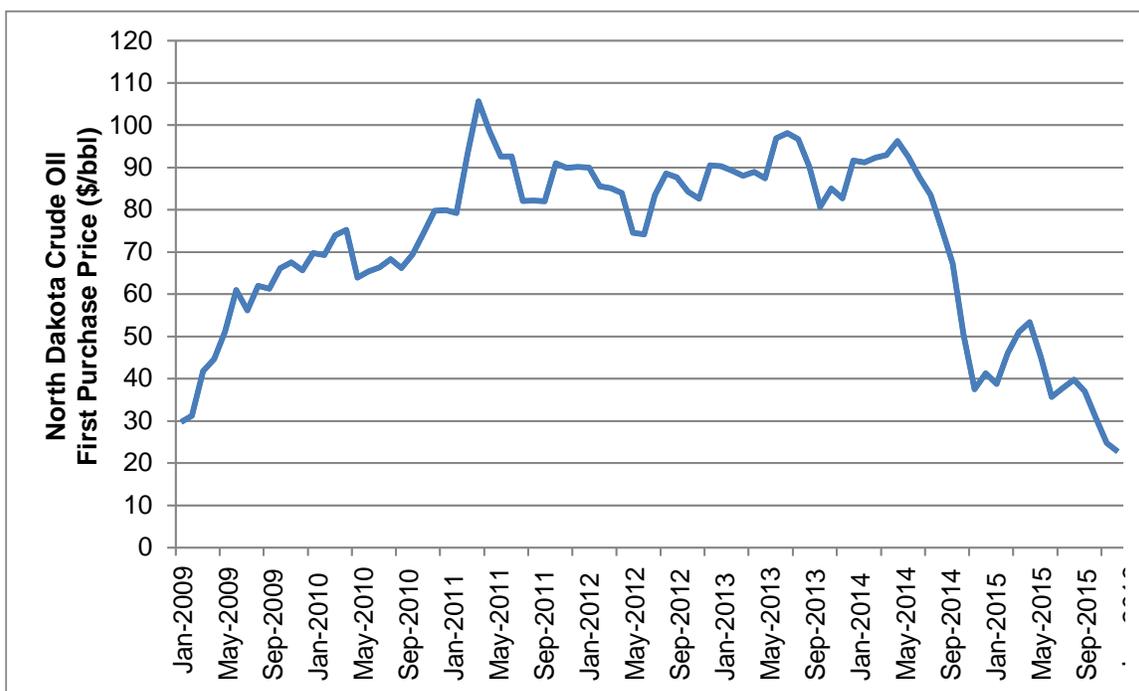
marginal cost of shipments is just the variable cost (capital has already been invested and the capital costs are sunk costs), while for a proposed project not yet constructed the marginal cost is variable cost plus the fixed costs required to provide a return to the new capital investment. The variable cost of operating pipelines is significantly less than the fixed cost so the marginal cost of shipments on an existing pipeline will be much lower than the marginal costs for a proposed pipeline like Sandpiper⁸. The cost comparisons of alternatives provided in the proponent's application prepared by Muse, Stancil & Co. ("Muse") do not make this distinction and therefore overstate the cost of existing transportation capacity relative to proposed new capacity, such as Sandpiper. The result is that the relative benefits of the Sandpiper Project are overstated. Furthermore, the analysis of the Project does not assess the costs of any surplus capacity that Sandpiper may create. The absence of an analysis of the costs of surplus capacity as a requirement by the DSDD is a deficiency that should be remedied. Estimates of surplus capacity costs should be included in the DSDD as part of the benefit cost analysis (BCA) for the Project.

4.2 Oil Market Changes

Since the Project application and the Muse benefits analysis were submitted in 2013-14, there have been important changes in the market that impact the economic prospects for Sandpiper. The steep decline in oil prices that started in summer 2014 has led to an enduring low oil price scenario for Bakken crude. As shown in Figure 1, North Dakota oil prices have fallen from an average of \$96 per barrel (bbl) in June 2014 to about \$38/bbl in January 2015. There has not been any indication of a rebound either as prices averaged less than \$23/bbl in February 2016. This has led oil analysts to lower their oil price forecasts, with some forecasting that oil will remain in the \$50/bbl to \$70/bbl range for the next several decades (Wolak 2015). The International Energy Agency (IEA) has also recently reduced their longer-term forecasts and included a long-term low price scenario (IEA 2015).

⁸ For example, Enbridge mainline pipeline variable costs average about 23% of the total pipeline cost, while the remaining 76% is required to cover fixed costs (calculated from data in Enbridge 2014). This means that the marginal cost of shipments on an existing pipeline with a toll of \$3.00 per barrel would be \$.69 per barrel while the marginal cost of a proposed pipeline with a toll of \$3.00 would be \$.69 per barrel to cover variable cost plus \$2.31 per barrel to cover fixed costs of the new capital investment. The ratio of variable to fixed costs will vary among pipelines and between pipelines and other modes of transportation such as rail. Variable costs for rail shipments, for example, will be a higher proportion of total costs than for pipelines. Therefore the marginal cost analysis will need to examine the specific costs of each transportation option.

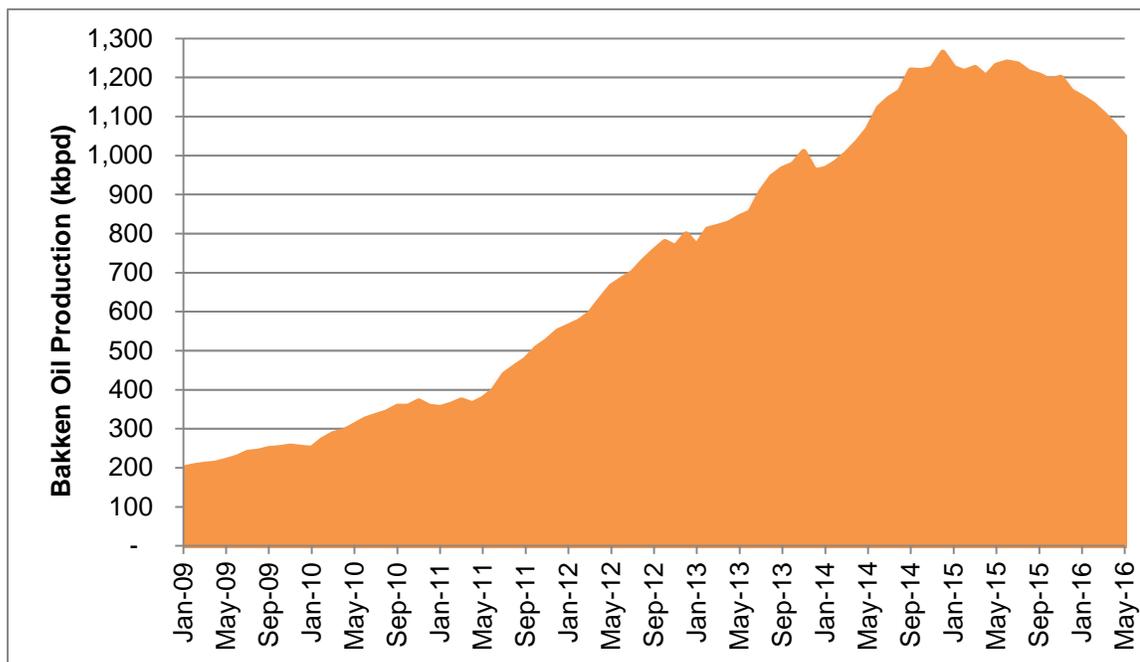
Figure 1 North Dakota Oil Price (Jan 2009 - Feb 2016)



Source: EIA (2016)

The decline in oil prices has fundamentally altered the economics of investment in oil development. The U.S. Energy Information Administration (EIA) forecasts total U.S. crude oil production to decline by 800 kbpd in 2016 and 600 kbpd in 2017 (EIA 2016). In the Bakken, drilling activity has slowed as a result of the price decline from a high of 194 rigs in September 2014 to only 32 active rigs in March 2016 (Kringstad 2016). The corresponding reduction in Bakken oil production is evident from Figure 2. The sharp decline in oil prices precedes the peak in Bakken oil production, and production has since declined by approximately 216 kbpd. This downward pressure on production reduces forecast shipments and further aggravates the potential for excess transportation capacity. These changes in oil markets show that the forecast used in the Muse market analysis for the Project, which is based on pre-2014 oil prices, is no longer valid.

Figure 2 - Bakken Region Oil Production



Source: EIA (2016)

The marginal cost of production relative to oil prices is an important consideration for forecasting future Bakken production levels, and therefore for evaluating transportation alternatives. It is also a critical factor in assessing the environmental and socioeconomic impacts of the No Action Alternative. If declining production levels reduce the need for transportation capacity, then the No Action Alternative addresses the same need as the proposed project: delivering appropriate volumes of Bakken crude to the refineries that demand it.

The Bakken oil formation is host to about 6,288 wells capable of producing a minimum of 400 bpd. The completed well costs of these wells are in the range of \$6-8 million. However, according to Kringstad (2016), at a \$35/bbl oil price and a 20% internal rate of return (after production taxes and royalties), none of the wells in the Bakken region would be economical at production levels below 600 bpd. In fact, when oil prices are \$35/bbl, wells completed at a cost of \$7 million must be capable of producing more than 1,000 bpd to earn greater than a 20% IRR. Only about 8% of the \$6-8 million wells in the Bakken region can produce more than 1,000 bpd. In other words, the breakeven wellhead price for the majority of Bakken wells is much higher than \$35/bbl (in the \$45-75/bbl range). Since the North Dakota crude oil price is currently

below even the \$35/bbl mark, a major rise in oil prices would be required for Bakken production to return and surpass mid-2014 levels as projected in the Muse analysis.

While our assessment points to lower Bakken production in the near term, Sandpiper could contribute to higher Bakken production volumes under certain conditions. If oil prices recover and/or producers are able to achieve deep cuts in their costs that make new investments in the Bakken region viable again, it is possible Sandpiper could result in incremental oil production by providing lower transportation costs.

4.3 New Projects Not Considered

Several of the major new projects included in the North Dakota Pipeline Authority transportation analysis summarized in Table 1 are not included in the Muse analysis submitted by the proponent in support of Sandpiper. The new projects, their expected in-service dates, and the changes in capacity omitted from the Muse analysis are shown in Table 2. All are scheduled to be in operation before Sandpiper, with the exception of the TransCanada Upland Pipeline. In total, the Muse analysis omits 608 kbpd of transportation capacity and regional refinery expansion. The largest change is due to the 450 kbpd of capacity expected to be available through the Energy Transfer Partners Bakken Pipeline in 2017. These new projects that have been proposed since the Muse analysis was completed are additional alternatives to Sandpiper that need to be assessed.

Table 2. Williston Basin Crude Oil Export Capacity Not Included in Muse Analysis

Project	In-service date	Change in Capacity from Muse (kbpd)
Butte Expansion	Q3 2014	-10*
Keystone XL Pipeline	Permit denied	-100*
Kinder Morgan Double H Pipeline	Q1 2015	+8*
Energy Transfer Partners Bakken Pipeline	Late 2016	+450
TransCanada Upland Pipeline	2020	+220
Dakota Prairie Refinery	Q2 2015	+20
Thunder Butte Refinery	2018	+20
Pipeline/Refining Total		+608

Source: NDPA (2016a)

*Included in Muse analysis, but capacity has changed. Difference in capacity shown.

4.4 Summary

In summary, changes in oil markets, Bakken production, and the forecast potential transportation capacity since the Muse analysis was conducted impact the rationale for Sandpiper. As discussed, the price of oil has not recovered since its collapse in 2014. A lower oil price has led to a downturn in Bakken oil production, and as a result, the production forecast used in the Muse analysis is now too high. In addition, new proposed transportation and refinery projects could mean that, if approved, the capacity provided by Sandpiper in 2019 will contribute to costly surplus capacity. At the scoping stage, this implies that the current transportation needs for Bakken crude may be met by either No Action at all, or by alternative projects that are expected to be in operations before Sandpiper. Constructing unneeded pipeline infrastructure would impose long-term costs on the oil and gas sector, as well as costs to government in the form of lower tax revenue. For these reasons, it is essential that the DSDD include a re-evaluation of the need for the Project, a comprehensive assessment of alternatives, and an estimate of the costs of any surplus capacity created by the Project.

5. Other Issues in Scoping

We identify the following three additional omissions in the DSDD that should be required as part of the EIS for the Sandpiper Project⁹:

1. The DSDD needs to include an assessment of damage costs for a worst-case scenario oil spill. The Enbridge Kalamazoo River spill, which is estimated to have cost \$1.21 billion (Enbridge 2014), shows that the magnitude of spill damages can be substantial and consequently it is important to assess the financial capacity of NDPC (insurance and assets) to cover the costs associated with a worst-case spill and its legal obligation to pay damage costs and compensate third parties.
2. The DSDD needs to include a review of the spill response capacity of NDPC. The importance of assessing spill response is again illustrated by the Kalamazoo River spill near Marshall, Michigan in July 2010. Enbridge's emergency response was characterized by the National Transportation Safety Board (NTSB) as being

⁹ It is important to note that the DSDD stipulates that the EIS will also analyze the potential impacts of the Line 3 Replacement (L3R) Project as part of the EIS's cumulative impacts discussion given the L3R route parallels the Sandpiper route between Clearbrook, Minnesota, and Superior, Wisconsin. Although our assessment of need focuses on Sandpiper, the omissions in scoping we have identified also apply to the environmental assessment for the L3R Project.

“not sufficiently focused on source control and demonstrated a lack of awareness and training in the use of effective containment methods” (2012, p. 119). The pipeline ruptured for over 17 hours despite monitoring systems and after the spill was detected, Enbridge experienced considerable difficulties locating contractors and other necessary resources to contain the spill (NTSB 2012).

3. The DSDD needs to include an assessment of upstream impacts of the Project. If, as Muse concludes, Sandpiper will provide Bakken producers with pre-tax economic benefits through higher netback prices for their product, the impacts of any incremental production need to be included in the EIS. The Canadian Government has developed a methodology to assess the upstream greenhouse gas (GHG) emissions from projects under review (Department of Environment and Climate Change 2016). In their definition, the upstream includes all industrial activities from the point of resource extraction, which are generally the extraction, processing, handling and transportation of the product. The assessment of upstream GHGs should consist of both a quantitative estimation of the GHG emissions released as a result of upstream production associated with Sandpiper, and a discussion of the projects’ potential impact on national and global GHG emissions.

6. Benefit Cost Evaluation

The best method to assess the costs and benefits of the Project and whether the consequences of approving Sandpiper are more favourable than the consequences of not approving it is benefit cost analysis (BCA). BCA is a standard requirement for approval of many major projects in the United States and should be used to assess projects such as Sandpiper. The objective of BCA is to identify all the positive and negative consequences of a project and to assess the relative significance of these consequences to determine whether a project generates a net gain or net loss to society. BCA is based on a well-developed theoretical foundation, its methodology and application is outlined in numerous publications, and it is required for various types of approvals in many jurisdictions. Since potential environmental effects associated with the Line 3 Replacement (L3R) Project must be incorporated in the cumulative impacts analysis of the EIS for Sandpiper, costs and benefits associated with L3R should factor into a BCA for Sandpiper too. Therefore, the Final Scoping Decision Document

should require a BCA of Sandpiper, the L3R Project, and alternatives as part of its “Special Studies or Research” identified in part 5 of the DSDD.

7. Conclusion

In this report, we have examined the purpose of the Sandpiper Pipeline Project and the proposed scope of the DSDD. Subsequent to the submission and review of the application for Sandpiper there have been major changes in oil markets that impact the need for and potential costs and benefits of Sandpiper. The dramatic decline in oil prices has reduced current and forecast Bakken oil production. At the same time, there are more new oil transportation projects proposed for the Bakken region, which increase the number of alternatives to Sandpiper and the likelihood of building costly excess transportation capacity that could exceed over 2 million bpd by 2020. These developments require a comprehensive reassessment of the need for and costs and benefits of approving Sandpiper. To ensure the Project is needed and in the public interest, the final scoping decision document needs to:

- Expand the objective of Sandpiper from the narrow definition of shipping oil to Superior, Wisconsin to the primary objective of shipping Bakken oil to market and consider all other viable options that meet this primary objective.
- Require a comprehensive oil transportation supply and demand analysis for the Bakken region that incorporates major changes that have occurred since the original application (additional projects, lower production forecasts).
- Evaluate all the alternative projects for transporting Bakken oil to market by conducting a benefit cost analysis.
- Estimate the costs of any surplus capacity created by building Sandpiper.
- Assess the terms of shipper service transportation agreements for Sandpiper to identify provisions or factors that allow shippers to abrogate terms of the contract.
- Assess other potential impacts of the Project, specifically:
 - Damage costs for worst-case oil spills.
 - The financial capacity of the proponent (insurance and assets) to cover the costs associated with a worst-case spill and its legal obligation to pay damage costs and compensate third parties.
 - Estimate of upstream emissions and environmental impacts.

Again we emphasize the importance of undertaking a comprehensive BCA as part of the EIS to quantitatively estimate the costs and benefits of the Project with potential L3R impacts incorporated. This approach would allow for a comparison of all viable transportation options and help identify the option or mix of options that meets the transportation needs of the Bakken oil sector in the most cost-effective social, environmental, and economic manner.

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Resume

Dr. Thomas Gunton

Director and Professor, School of Resource and Environmental Management

Simon Fraser University

8888 University Drive

Burnaby BC

V5A 1S6

Summary

Dr. Gunton is currently Professor and Director of the Resource and Environmental Planning Program at Simon Fraser University, which is recognized as one of the leading international schools providing advanced interdisciplinary training for resource professionals. Dr. Gunton has had extensive professional experience including holding the positions of Deputy Minister of Environment, Lands and Parks, Deputy Minister of Cabinet Policy Secretariat and Deputy Minister of Finance (Treasury Board) for the Government of British Columbia. He has also held senior positions with the Government of Manitoba, including Assistant Deputy Minister of Energy and Mines where he was in charge of major natural resource project development and evaluation, Senior Economic Analyst in the Ministry of Economic Development and was visiting professor in resource and environmental economics at the University of Manitoba.

Dr. Gunton regularly provides advice to private sector and public sector clients. His work includes evaluation of resource development projects, regional development strategies and negotiation and collaborative models for resolving resource and environmental conflicts. While working for the BC government he managed a number of major initiatives including: a new Environmental Assessment Act, a new Forest Practices Code, a forest sector strategy, a new regional land use planning process, a major expansion of the provincial parks system, a redesign of the regulatory and royalty system for oil and gas development and new air pollution regulations. He was also the chief negotiator for the province on a number of major resource development projects including Kemano completion and oil and gas royalties. Dr. Gunton has been an expert witness for various regulatory agencies including the National Energy Board, the Ontario Energy Board, and the Manitoba Public Utilities Commission. He has also been an expert witness before the BC Arbitration Panel providing evidence on natural resource markets and pricing.

Dr. Gunton's works on management issues in a number of resource sectors including forestry, land use, energy, mining and fisheries. He is Chair of the Sustainable Planning Research Group and heads a research team providing advice to First Nations on impacts and risk assessment of oil and gas development and pipeline proposals including the Enbridge Northern Gateway project (NGP). He was senior supervisor of recently completed (2014) PhD research evaluating risk assessment and benefit-costs for the Enbridge Northern Gateway Pipeline. Dr. Gunton also recently prepared a draft of the Federal Sustainable Development Act for the Suzuki Foundation that was passed unanimously by the Parliament of Canada in 2008. Dr. Gunton has published over 80 refereed articles in scientific journals and over 100 technical reports for private and public sector clients on resource and environmental issues and project development. He was recently awarded (2014) a large four year Mitacs research grant (\$400,000) to assess social, environmental and economic impacts of natural resource development on First Nations in BC. Dr. Gunton has been working with First Nations for over 15 years to assess the impact of major projects on First Nations interests and to help negotiate impact benefit agreements between project developers and First Nations. He is currently assessing the impacts of the Kinder Morgan Pipeline for First Nations and is acting as an expert witness for First Nations in the NEB hearings on the Kinder Morgan Pipeline.

Current Employment

Professor and Director of the Resource and Environmental Planning Program, School of Resource and Environmental Management, Simon Fraser University. (1980-present).

Responsibilities

Teaching graduate courses in public policy analysis, regional resource development, dispute resolution. (courses include: environmental impact assessment, cost-benefit analysis, economic impact assessment, multiple accounts evaluation (social, environmental, fiscal, economic assessment techniques), conflict resolution techniques, regional development.) Senior Supervisor of over 40 graduate theses on resource and environmental management

Previous Employment

1. Deputy Minister, Cabinet Policy Secretariat, Government of British Columbia, 8/96 to 8/00.
2. Deputy Minister, Ministry of Environment, Lands and Parks, Government of British Columbia, 10/93 to 7/96.
3. Deputy Minister, Treasury Board Secretariat, Ministry of Finance and Corporate Relations, and Secretary to Treasury Board. 08/92 to 10/93.
4. Director, School of Resource and Environmental Management, Simon Fraser University, 08/88 to 12/91.
5. Assistant Deputy Minister, Department of Energy and Mines, Province of Manitoba, Policy Planning and Project Development Division, 8/86 to 8/88
6. Senior Economic Analyst. Department of Energy and Mines, Province of Manitoba, Policy Planning and Project Development, 1984. (project and policy evaluation)
7. Visiting Professor, Department of Economics 1983, University of Manitoba, (teaching senior course in resource and environmental economics).
8. Senior Economic Analyst, Department of Economic Development, Province of Manitoba, 1983
9. Consultant to private and public sector clients 1980-present including. Major activities include: economic and environmental evaluation of major resource and energy projects and markets, participation as expert witness before agencies including NEB, OEB, MPUC, BC Arbitration Panel (on resource pricing and energy markets).

Refereed Publications over 80

Professional Reports Prepared over 100

Research Funding \$1,668,000

Education

University of Waterloo BA, MA (Planning). (Field: regional planning and natural resource analysis and policy including law, ecology, economics and public policy)

University of British Columbia, Ph.D., Planning (Field: Natural resource policy, regional development planning, planning theory and public policy).

James Hoffele

5455 Dominion St.

Burnaby, B.C. V5G 1E1

604.345.3735

jhoffele@gmail.com

Education

2012–2015

Masters of Resource Management (Planning)

Simon Fraser University (SFU), Burnaby, British Columbia

2011–2012

Teacher Education B.Ed. (Junior/ Intermediate)

Brock University, St. Catharines, Ontario

2007–2011

Concurrent B.A. Integrated Studies (Honours), Education, Minor in Geography

Brock University, St. Catharines, Ontario

Work Experience

Environmental Coordinator

Strategic Initiatives with Environmental Programs at Vancouver Fraser Port Authority

September 2015 – Present

- Supporting daily operation of EcoAction Program for Ships through administration of program requirements including receiving and processing applications for reduced harbor due rates, and confirming environmental performance of corresponding applicants/ships.
- Assisting in the environmental review of assigned project proposals as required under the Port's Environment Policy and the Canadian Environmental Assessment Act, and preparing project environmental assessment reports and schedules of environmental conditions as required.
- Supporting noise and air projects, initiatives and programs through assisting with coordination of data management, analyzing data, quality assurance, continuous improvement processes and reporting.

Permitting Coordinator (Co-op)

Infrastructure Sustainability at Vancouver Fraser Port Authority

December 2014 – August 2015

- Coordinating all associated permits and approvals for habitat enhancement projects in accordance with the Port's habitat banking agreement with Fisheries and Oceans Canada.
- Assisting in Environmental Impact Statement development, consulting service procurement for environmental studies, risk management, and progress reporting for Roberts Bank Terminal 2 Project.

Environmental Consultant with Dr. Thomas Gunton

Living Ocean Society

March – June 2015, May 2016

- Co-authored socio-environmental cost-benefit analysis of Kinder Morgan's proposed Trans Mountain pipeline expansion project for submission as expert evidence to the National Energy Board.
- Evaluated the project's social value based on construction, operation, excess Western Canada oil supply capacity, associated air emissions, risk assessment of oil spills, employee benefits, and oil price uplift effects.

Junior Project Scientist (Internship) with Air Quality and Climate Change Group

SNC-Lavalin, Vancouver

May 2014 – September 2014

- Conducted analysis and research for projects related to regional air quality, pollutant dispersal, policy development, and noise monitoring.
- Learned and applied in-house Port Emission Inventory Tool to analyze greenhouse gas and air contaminant emissions for Prince Rupert Port Authority's 12 terminals.

Environmental Consultant with Dr. Mark Jaccard

City of Vancouver

April 2014 – June 2014, October 2014 – January 2015

- Assessed and estimated the lifecycle greenhouse gas emissions of proposed Trans Mountain pipeline expansion. The report is being used to inform City of Vancouver's motion filed with the National Energy Board to include the economic effects of climate

change in its federal review of the project.

- Led and completed a second report for City of Vancouver analyzing the economic impact on the proposed Trans Mountain pipeline expansion if governments enact policy to fulfill their stated climate targets.

Teaching Assistant for Sustainable Energy and Materials Management undergraduate course

SFU, Burnaby

January 2014 – May 2014

- Facilitated three undergraduate tutorials consisting of approximately 20 students each.
- Provided students with an understanding of the human-induced flows of energy and materials as well as the institutional arrangements, decision-making processes and policy mechanisms for fostering the global adoption of more sustainable technologies and behaviors.

Climate Coordinator

Sustainable SFU, Lower Mainland, BC

September 2013 – May 2014

- Promoted climate change action and energy use reduction at SFU through supporting a fossil fuel divestment campaign, assisting with a climate justice conference, and coordinating an energy reduction program in cooperation with Facilities Management and BC Hydro.

Graduate Student Researcher

Energy and Materials Research Group

SFU, Burnaby, BC

September 2012 – September 2014

- Worked with a diverse energy group that uses an energy-economy model (CIMS) to analyze the cost- effectiveness of technologies, strategies, behaviours and policies to increase energy efficiency and mitigate climate change.
- Under the supervision of Dr. Mark Jaccard and using data obtained from multiple energy-economy modeling teams, I conducted an analysis of the likely decline in production of different fossil fuel resources if global temperatures are limited to a 2o C increase.

- Winner of Joseph-Armand Bombardier Canada Graduate Scholarship

Professional Development

Mitacs Step: Foundations of Project Management I & II

- Participated in two 16-hour workshops to further develop skills in managing both large and small-scale projects, setting realistic goals and milestones, and clear team communication.
- Power Writing Workshop
- Completed three-day business and technical writing workshop lead by David Vale designed to help professionals gain an increased ability to affect readers precisely as they wish in their emails, letters, and reports.

BCIT Project Management Essentials

- Learned the essentials of project management including project definition, work breakdown systems, scope of work, activity development, network diagrams, scheduling, resource leveling, time cost trade-offs, estimating, earned value, reporting and progress measurement during the life of the project.
- First in suite of courses for BCIT associate certificate in Project Management.
- RWDI Introductory Air Modelling Course
- Gained a better understanding of the key meteorological processes that impact air quality to be able to select the appropriate model(s) to address specific air quality issues.
- Assessed suitable modelling approaches for Metro Vancouver Model Plans and permit applications to assess necessary input data and critically review air quality modelling studies.

Envision Sustainability Professional

- Trained in the use of the Envision rating system and credentialed by the Institute of Sustainable Infrastructure.
- Envision provides a holistic framework for planning, evaluating and rating the community, environmental and economic benefits of all types and sizes of infrastructure projects. It encourages, evaluates, grades, and gives recognition to infrastructure projects that use transformational, collaborative approaches to assess identified sustainability indicators over the course of the project's life cycle.

Board Director at The Starfish Canada

- Elected to The Starfish Canada's Board of Directors in March 2016 for a two year term to provide direction to this non-profit environmental organization that has a strong online presence. Through blogging, events, and workshops this organization celebrates and amplifies environmental, solutions-based stories across the nation, with a focus on youth-based initiatives.



Comment Form: Scoping
Energy Environmental Review and Analysis

Please provide your contact information. This information and your comments will be publicly available.

Name: William Fox Phone: 612-240-0085

Street Address: 20692 Hwy 210

City: McGregor, MN State: MN ZIP: 55760

Email: foxden1025@yahoo.com

My comments pertain to:

- Sandpiper Pipeline Project
- Line 3 Replacement Project
- Both Projects

This project is environmentally safe and differentially go for our area. I hope it proceeds quickly.