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## Chapter 11

# Environmental Justice

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### 11.1 INTRODUCTION

Environmental justice (EJ) refers to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income. In general, EJ is intended to ensure that all people benefit from equal levels of environmental protection and have the same opportunities to participate in decisions that may affect their environment or health (Minnesota PCA 2017; EPA 2017). Minority and/or low-income communities are often concentrated in small geographical areas within the larger geographically and/or economically defined population. Minority communities and low-income communities may constitute a very small percentage of the total population and/or geographical area. Therefore, the assumptions, inputs, and analytical tools typically used to evaluate the environmental and human health impacts associated with a proposed project may not fully reflect the impacts that may be borne by these historically (and currently) disenfranchised communities or populations. A quantitative analysis of disproportionate impacts provides a better understanding of how the total potential impacts vary across individual communities. This allows analysts and decision makers to identify and understand what portion of the total impacts may be borne by minority or low-income communities, to assess whether the impacts are disproportionately high and adverse, and to develop alternatives and mitigation measures to minimize impacts on these communities, if necessary.

A quantitative analysis is conducted in accordance with the existing regulatory framework. Additionally, this section acknowledges that the affected environment includes American Indian populations who use, reside, utilize, or rely on the lands within the project area. The presence and location of these unique populations may not be fully captured by the data, and for these communities, any adverse impact may be perceived as a disproportionately high and adverse impact. As such, a qualitative analysis of potential impacts to these populations is included herein (see also Chapter 9 for a description of impacts to tribal resources).

#### **Regulatory Context and Methodology**

The Council on Environmental Quality's (CEQ's) "Environmental Justice: Guidance Under the National Environmental Policy Act" (1997) and the U.S. Environmental Protection Agency's (EPA's) "Promising Practices for EJ Methodologies in NEPA Reviews" (2016) were developed to provide EPA and other agencies with a process for identifying EJ communities and addressing potential impacts on them. According to these guidance documents, the basic components of an EJ assessment should include:

- A demographic assessment of the potentially affected communities to identify minority and low-income populations that may be present;
- An integrated assessment to determine whether any adverse impacts would disproportionately affect minority or low-income populations; and
- An opportunity for the public to participate in the process, including community, minority, low-income, and tribal participation.

These two guidance documents also encourage agencies to consider the following:

1. Context and intensity are factors that can inform an agency's determination whether an impact is disproportionately high and adverse.
2. In addition to collecting data, agencies may identify and describe unique conditions of the potentially affected minority populations and low-income populations that may be affected by the proposed action. These conditions may include human health, socioeconomic, and cultural vulnerabilities.
3. Notably, the identification of a disproportionately high and adverse impact on low-income or minority populations neither precludes a proposed action from going forward, nor does it compel a conclusion that a proposed action is environmentally unsatisfactory. An agency may consider a heightened focus on meaningful public engagement regarding community preferences, considering an appropriate range of alternatives, and mitigation and monitoring measures (EPA 2016).
4. The disproportionately high and adverse impacts determination can help inform how an agency develops and/or selects alternatives and mitigation measures to avoid, minimize, rectify, reduce, or compensate for adverse impacts.

To perform the EJ analysis in accordance with the guidance documents noted above, Commerce established a geographic area within which potential impacts from the proposed Project could occur (the "region of interest", or ROI). The ROI comprises census tracts intersected by the right-of-way for the Applicant's preferred route and route alternatives. Publicly available census tract data were then obtained from the U.S. Census Bureau American Community Survey (ACS) to identify the presence of minority and low-income populations within the ROI (U.S. Census Bureau 2017). The ACS provides estimates based on a rolling survey conducted over 5 years. The most recent survey data are from 2011 to 2015. Census tracts are relatively permanent subdivisions of a county, created for the purpose of collecting statistical data, with boundaries confirmed or updated every 10 years. Populations in census tracts can vary from 1,200 to 8,000 people, with an optimal size of 4,000 people. To ensure census tract populations in counties are fairly equal, the geographic size of each census tract can vary widely depending on its population density. Data was also gathered for counties and census tracts outside of the ROI to gain an understanding of the characteristics and demographics in the state, region, and vicinity of the proposed Project as a whole (see Appendix Q).

Census tract data was then compared to their respective county data to determine whether the potential for disproportionate impacts exist. The following guidelines were used in the comparison:

- Low-income and minority populations were determined to be present in an area when the percentage of minority group or low-income population exceeded 50 percent of the county population, or was "meaningfully greater" than the general population of the county.
- A difference of 10 percentage points or more was used to determine whether the percentage of a minority or low-income group in a census tract in the ROI was "meaningfully greater" than that group's percentage in the respective county.
- Minority populations were calculated as the populations excluding those persons who self-reported as being white (and no other race) and not Hispanic or Latino. The minority population

includes persons who self-reported as Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, some other race, having two or more races, or being of Hispanic or Latino origin.

- Based on recommendations from the Minnesota PCA, low-income populations are those individuals with income below 185 percent of the poverty level (1.85 multiplier). While PCA generally uses a metric of 40 percent of population below 185 percent of the poverty level to establish EJ status (i.e., more than 40 percent of the households have a household income of less than 185 percent of the federal poverty level), this analysis uses a difference of 10 percentage points or more to establish the “meaningfully greater” measure consistent with the comparison of minority populations.

As outlined above, the metric used to identify EJ populations in this EIS is the comparison of census tracts to the whole of a county, which allows comparison of population groups within the same general vicinity. This provides a quantitative comparison of proportional impact. The EIS uses a comparison against county data rather than statewide data, because the statewide data combine data from widely varying areas and are not representative of any particular area. Additionally, the state is a dichotomy of urban and rural communities. In general, urban areas have higher percentages of minority populations, while rural areas have lower average incomes. Combining those data does not provide a clear comparison to establish levels of EJ at a local level.

In general, the data bear out these assumptions. In north central Minnesota, numerous census tracts qualify as low-income. The counties through which the proposed Project and its alternatives would run are predominately rural. In 20 of the 21 counties, the percentage of the population below 185 percent of the poverty level is greater than for the state as a whole. In only one of the 21 counties, Cass County, is the percentage of the minority population greater than at the state level. In contrast, 13 of the 21 counties have a greater percentage of American Indian populations than at the state level. Figure 11-1 depicts the locations of the census tracts and counties in the ROI and indicates the census tracts with minority and low-income populations that are considered EJ communities according to the methodology identified herein.

It is also important to note that census tract data, while providing a comparison of population groups within the same general vicinity, may not capture smaller, micro-populations within a larger census tract, such as the East Lake Community or other geographic clusters of tribal populations that are not within the boundaries of a federally recognized reservation. The impacts described, and the mitigation measures proposed, however, do take into account all potential high and adverse impacts of the proposed action and alternatives.

Once EJ communities are identified (Section 11.3), a summary of resource-specific impacts on those communities are described (see Section 11.4). The EIS identifies the potential for disproportionately high and adverse impacts and describes the types of impacts, as well as mitigation measures.

The EIS also describes the unique issues and intensity of impacts that may exist in the context of the ROI. Mitigation measures are provided where appropriate to address the potential for the identified disproportionately high and adverse impacts.

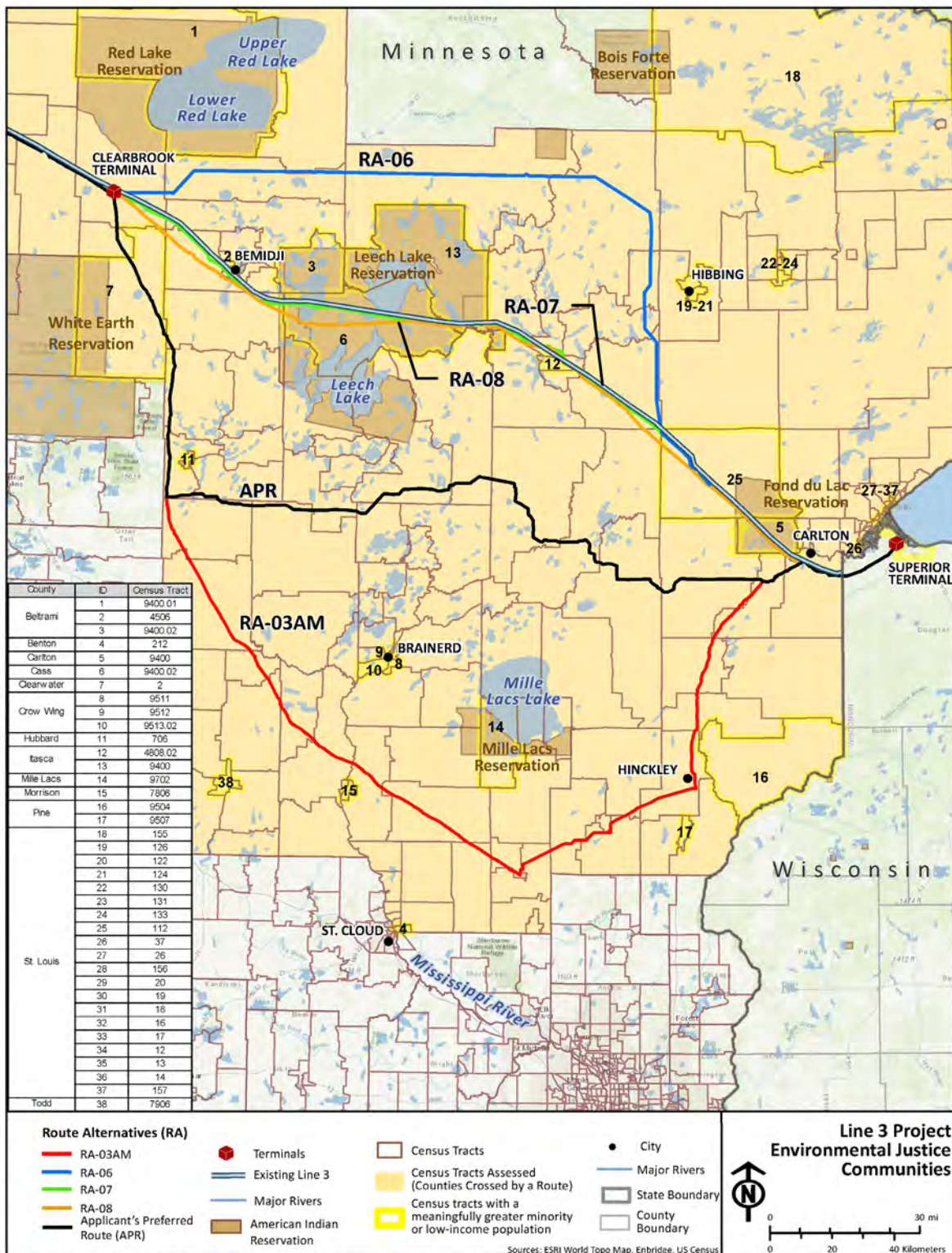


Figure 11-1. Areas of Concern for Environmental Justice in the Region of Interest (Route Alternatives)

Lastly, while the technical analysis is conducted in accordance within the existing regulatory framework, a qualitative discussion of unique communities, cultural considerations, and impacts is also included.

## 11.2 EXISTING ENVIRONMENT

### 11.2.1 Minority Populations

The Applicant's preferred route and the route alternatives would cross one or more census tracts with a meaningfully higher minority population than the surrounding county (see Figure 11-1). The percentage of the county with a minority population is provided in Table 11.2-1; this table also includes those census tracts within the county that are crossed by the Applicant's preferred route and/or one of the route alternatives. A listing of all census tracts crossed by the Applicant's preferred route or the route alternatives is provided in Appendix Q. Appendix Q also includes census tracts within the ROI.

**Table 11.2-1. Minority Population**

| State/County                      | Percent Minority Population | 10 Percentage Points Higher than County Level | 50 Percent of Total Population Minority |
|-----------------------------------|-----------------------------|---|---|
| Minnesota                         | 18.3                        | -   | -                                       |
| Aitkin County                     | 5.6                         | -   | No                                      |
| Beltrami County                   | 26.6                        | -   | No                                      |
| Census tract 9400.01              | 96.8                        | Yes   | Yes                                     |
| Census tract 9400.02              | 46.1                        | Yes   | No                                      |
| Benton County                     | 7.3                         | -   | No                                      |
| Carlton County                    | 11.4                        | -   | No                                      |
| Census tract 9400 <sup>a</sup>    | 49.7                        | Yes   | No                                      |
| Cass County                       | 15.8                        | -   | No                                      |
| Census tract 9400.02 <sup>a</sup> | 72.9                        | Yes   | Yes                                     |
| Clearwater County                 | 14.2                        | =   | No                                      |
| Census tract 2 <sup>a</sup>       | 25.3                        | Yes   | No                                      |
| Crow Wing County                  | 4.5                         | =   | No                                      |
| Hubbard County                    | 6.5                         | =   | No                                      |
| Itasca County                     | 7.7                         | =   | No                                      |
| Census Tract 9400 <sup>a</sup>    | 34.7                        | Yes   | No                                      |
| Kanabec County                    | 4.7                         | -   | No                                      |
| Kittson County                    | 3.6                         | -   | No                                      |
| Marshall County                   | 6.0                         | -   | No                                      |
| Mille Lacs County                 | 10.1                        | -   | No                                      |
| Census tract 9702                 | 40.4                        | Yes   | No                                      |
| Morrison County                   | 3.7                         | -   | No                                      |

**Table 11.2-1. Minority Population**

| State/County                  | Percent Minority Population | 10 Percentage Points Higher than County Level | 50 Percent of Total Population Minority |
|-------------------------------|-----------------------------|---|---|
| Pennington County             | 8.7                         | -   | No                                      |
| Pine County                   | 10.1                        | -   | No                                      |
| Census tract 9540             | 25.9                        | Yes   | No                                      |
| Polk County                   | 11.0                        | -   | No                                      |
| Census tract 207 <sup>a</sup> | 25.9                        | Yes   | No                                      |
| Red Lake County               | 6.9                         | -   | No                                      |
| St. Louis County              | 8.3                         | -   | No                                      |
| Census tract 112 <sup>a</sup> | 20.1                        | Yes   | No                                      |
| Census tract 12               | 22.0                        | Yes   | No                                      |
| Census tract 131              | 19.7                        | Yes   | No                                      |
| Census tract 155              | 23.6                        | Yes   | No                                      |
| Census tract 156              | 33.2                        | Yes   | No                                      |
| Census tract 16               | 26.3                        | Yes   | No                                      |
| Census tract 18               | 24.7                        | Yes   | No                                      |
| Census tract 19               | 27.9                        | Yes   | No                                      |
| Todd County                   | 8.1                         | -   | No                                      |
| Wadena County                 | 5.0                         | =   | No                                      |

Source: See Appendix Q.

<sup>a</sup> Crossed by CN alternative(s).

The Applicant's preferred route bisects, and RA-03AM crosses the edge of Census Tract 002 in Clearwater County, where the minority population of 25.3 percent exceeds the county level by more than 10 percentage points (Figure 11-1; Appendix Q). This census tract includes a portion of the White Earth Reservation, and the minority population in the tract is overwhelmingly American Indian (23.2 percent of the population; Appendix Q). Even though the Applicant's preferred route crosses the census tract, it does not cross the reservation (see Chapter 2.1 for further detail regarding the White Earth Reservation boundary). With respect to the CN Alternatives, Alternate Rail route to Superior North and the Truck Route Gretna to Superior Terminal also cross Census Tract 002 in Clearwater County (Figure 11-2).

Alternatives RA-06, RA-07 and RA-08 each cross two or more census tracts with minority populations that meaningfully exceed their county levels, indicating potential EJ concerns. All CN Alternatives except the Alternate Rail route to Clearbrook cross census tracts with EJ concerns.



Specifically, the alternatives affect Census Tracts within the ROI as follows:

- All three route alternatives cross Census Tract 9400 through the Fond du Lac Reservation in Carlton County. The American Indian population of this Census Tract is 46.9 percent compared to the county level of 7.2 percent (Figure 11-3).
- Alternate Rail Route to Superior North and Superior South cross this Census tract (see Figure 11-4).
- All three route alternatives would cross Census Tract 112 in part through the Fond du Lac Reservation in St. Louis County, with an American Indian population of 17.5 percent compared to the county level of 3.4 percent (Figure 11-5).
- Alternate Rail Route to Superior North and Truck Route Gretna to Superior Terminal also cross Census Tract 112 (see Figure 11-4).

Route alternatives RA-07 and RA-08 each pose the following additional EJ concerns:

- Both routes would cross Census Tract 9400 through the Leech Lake Reservation in Itasca County, with an American Indian population of 29.9 percent compared to the county level of 5.0 percent (Figure 11-6).
- With respect to the CN Alternatives, Alternative rail route to Superior North and Alternate Truck Route Gretna to Superior Terminal also cross Itasca County Census Tract 9400.
- Both route alternatives cross Census Tract 9400.02 through Leech Lake Reservation in Cass County, with an American Indian population of 69.2 percent compared to the county level of 13.2 percent. The entire census tract is located within the Leech Lake Reservation (Figure 11-7).
- With respect to the CN Alternatives, Alternate Rail Route to Superior North and Alternate Truck Route Gretna to Superior Terminal also cross Cass County CT 9400.02 (see Figure 11-2).
- With respect to the CN Alternatives, Alternate Rail Route to Superior North, and both truck routes, would impact Polk County census tract 207, which has a minority population of 25.9 percent as compared to the county level of 11 percent (see Figure 11-4). This is the only census tract with EJ concerns impacted by Truck Route Gretna to Clearbrook terminal.

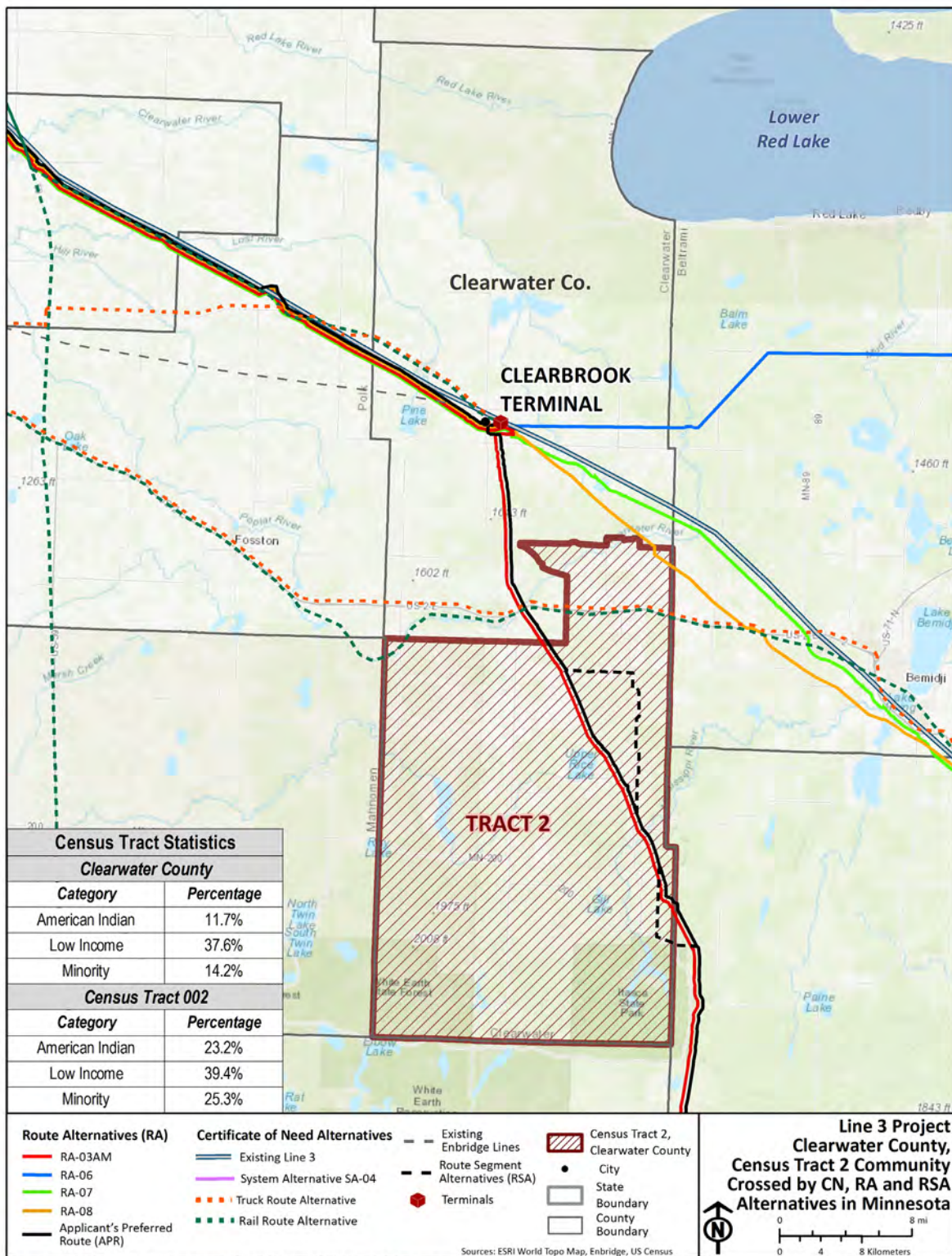
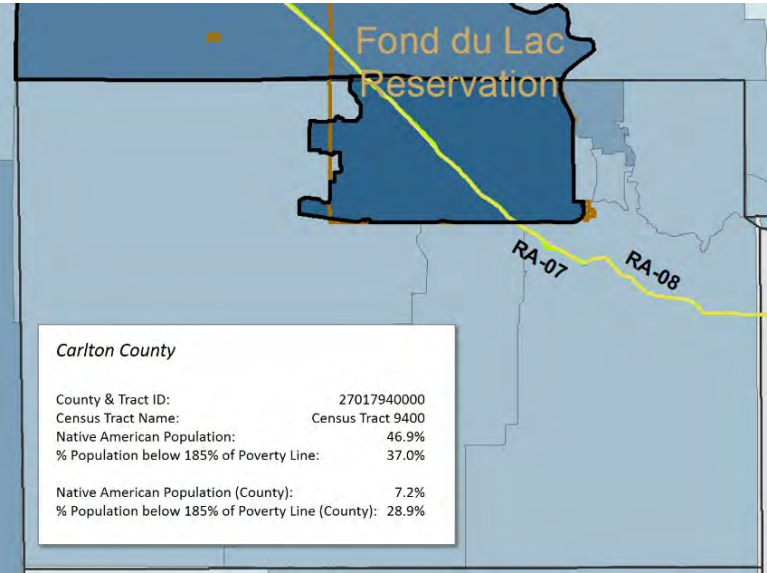


Figure 11-2. Clearwater County, Census Tract 2 Community Crossed by CN, RA, and RSA Alternatives in Minnesota



**Figure 11-3. Carlton County Areas of Environmental Justice Concern**

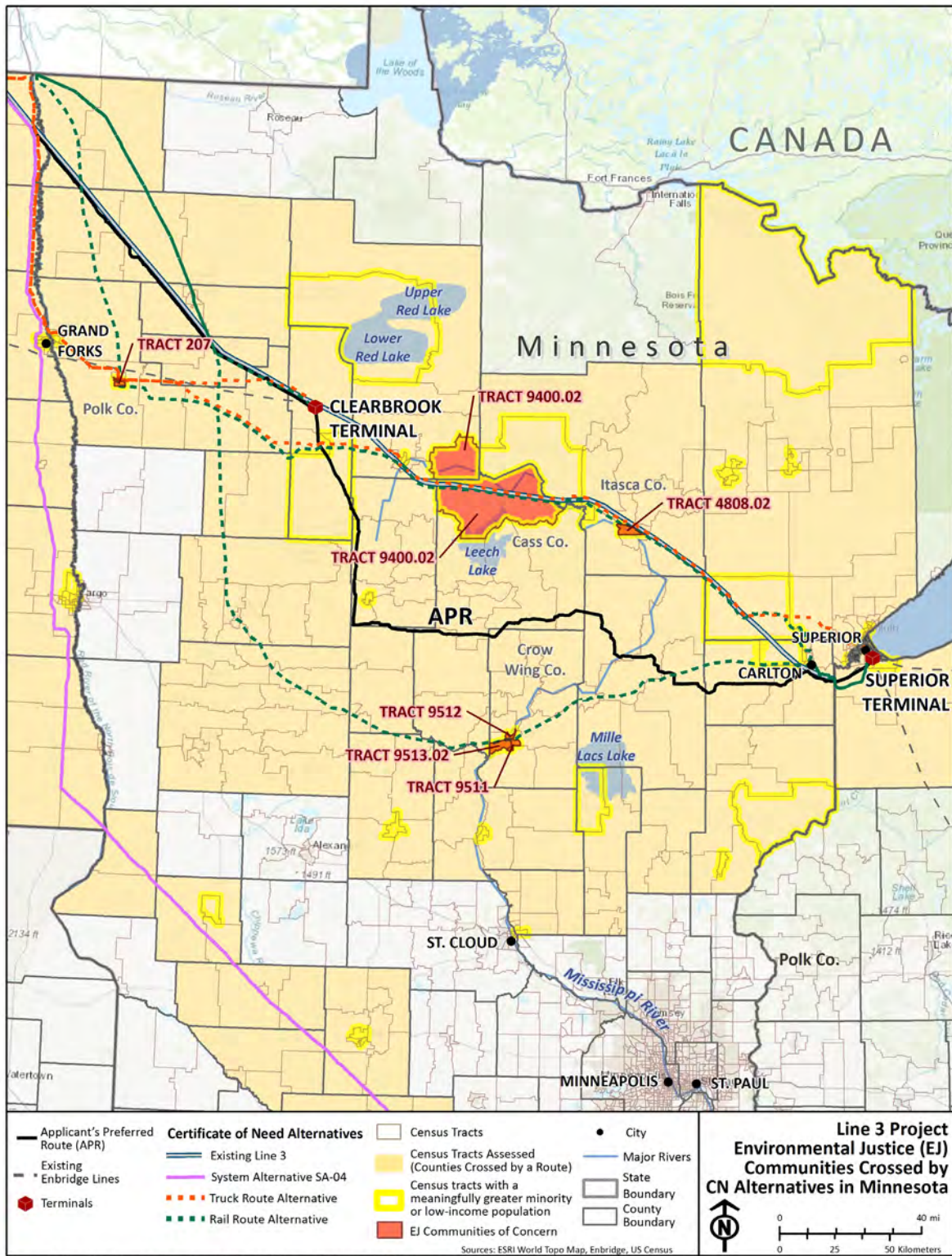


Figure 11-4. Areas of Concern for Environmental Justice in the Region of Interest (Certificate of Need Alternatives)

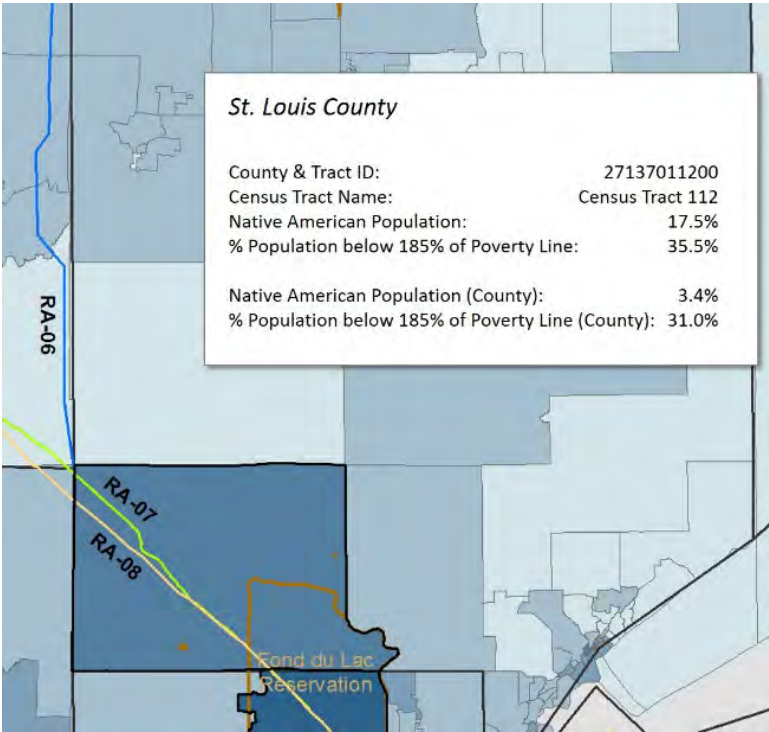


Figure 11-5. St. Louis County Areas of Environmental Justice Concern

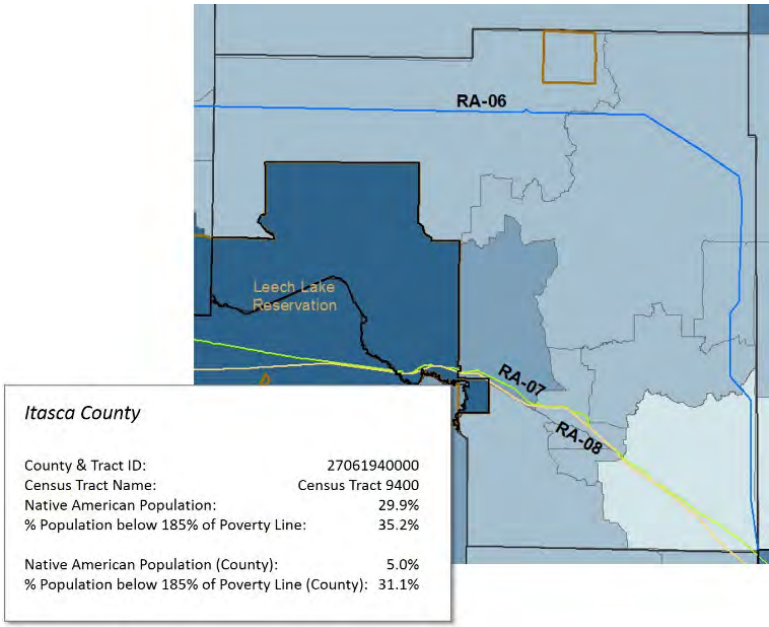
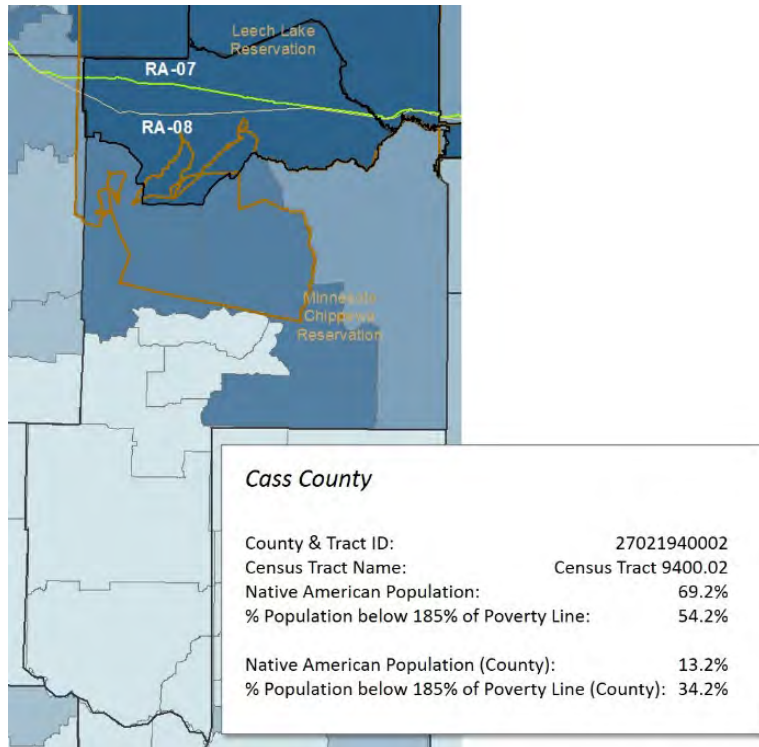


Figure 11-6. Itasca County Areas of Environmental Justice Concern



**Figure 11-7. Cass County Areas of Environmental Justice Concern**

### 11.2.2 Low-Income Populations

None of the census tracts crossed by the Applicant’s preferred route, RA-06, or RA-03AM has a meaningfully greater proportion of the population with income less than 185 percent of the poverty level compared to their respective county level (Appendix Q).

With respect to the CN Alternatives, the Alternate Rail Route to Superior North, Alternate Rail Route to Superior South, and Alternate Truck Route Gretna to Superior Terminal would cross several census tracts with poverty-related EJ concerns (see Figure 11-4).

**Table 11.2-2. Low Income Populations**

| State/County         | Percentage Below 185 Percent of Poverty Level | 10 Percentage Points Higher than County Level | 40 Percent of Population Below 185 Percent |
|----------------------|---|---|--|
| Minnesota            | 24.3  | -   | -  |
| Aitkin County        | 34.0  | -   | No   |
| Census Tract 7703    | 42.3  | -   | Yes  |
| Census Tract 7704    | 42.5  | -   | Yes  |
| Beltrami County      | 38.9  | -   | No   |
| Census tract 4506    | 54.6  | Yes   | Yes  |
| Census tract 4507.02 | 42.7  | No  | Yes  |

**Table 11.2-2. Low Income Populations**

| State/County                      | Percentage Below 185 Percent of Poverty Level | 10 Percentage Points Higher than County Level | 40 Percent of Population Below 185 Percent |
|-----------------------------------|---|---|--|
| Census tract 9400.01              | 69.1  | Yes   | Yes  |
| Census tract 9400.02              | 40.2  | No  | Yes  |
| Benton County                     | 30.5  | -   | No   |
| Census tract 211.01               | 40.2  | No  | Yes  |
| Census tract 212                  | 51.6  | Yes   | Yes  |
| Carlton County                    | 28.9  | -   | No   |
| Cass County                       | 34.2  | -   | No   |
| Census tract 9400.02 <sup>a</sup> | 54.2  | Yes   | Yes  |
| Clearwater County                 | 37.6  | =   | No   |
| Census tract 1                    | 41.6  | No  | Yes  |
| Crow Wing County                  | 29.0  | =   | No   |
| Census tract 9511 <sup>a</sup>    | 47.3  | Yes   | Yes  |
| Census tract 9512 <sup>a</sup>    | 44.1  | Yes   | Yes  |
| Census tract 9513.02 <sup>a</sup> | 39.7  | Yes   | No   |
| Hubbard County                    | 30.7  | =   | No   |
| Census tract 706                  | 41.8  | Yes   | Yes  |
| Itasca County                     | 31.1  | -   | No   |
| Census tract 4808.02 <sup>a</sup> | 42.1  | Yes   | Yes  |
| Kanabec County                    | 33.1  | -   | No   |
| Census tract 4803                 | 41.7  | No  | Yes  |
| Kittson County                    | 27.7  | -   | No   |
| Marshall County                   | 22.2  | -   | No   |
| Mille Lacs County                 | 30.4  | -   | No   |
| Census tract 9702                 | 47.8  | Yes   | Yes  |
| Morrison County                   | 29.1  | -   | No   |
| Census tract 7806                 | 40.8  | Yes   | Yes  |
| Pennington County                 | 28.7  | -   | No   |
| Pine County                       | 34.3  | -   | No   |
| Census tract 9507                 | 45.7  | Yes   | Yes  |
| Polk County                       | 27.3  | -   | No   |
| Census tract 202                  | 43.3  | Yes   | Yes  |
| Red Lake County                   | 26.6  | -   | No   |
| St. Louis County                  | 31.0  | -   | No   |

**Table 11.2-2. Low Income Populations**

| State/County      | Percentage Below 185 Percent of Poverty Level | 10 Percentage Points Higher than County Level | 40 Percent of Population Below 185 Percent |
|-------------------|---|---|--|
| Census tract 12   | 71.4  | Yes   | Yes  |
| Census tract 122  | 60.9  | Yes   | Yes  |
| Census tract 124  | 50.0  | Yes   | Yes  |
| Census tract 126  | 41.3  | Yes   | Yes  |
| Census tract 13   | 61.8  | Yes   | Yes  |
| Census tract 130  | 47.1  | Yes   | Yes  |
| Census tract 131  | 55.7  | Yes   | Yes  |
| Census tract 133  | 45.4  | Yes   | Yes  |
| Census tract 14   | 62.1  | Yes   | Yes  |
| Census tract 156  | 70.7  | Yes   | Yes  |
| Census tract 157  | 51.3  | Yes   | Yes  |
| Census tract 16   | 68.9  | Yes   | Yes  |
| Census tract 17   | 69.1  | Yes   | Yes  |
| Census tract 18   | 58.7  | Yes   | Yes  |
| Census tract 19   | 80.4  | Yes   | Yes  |
| Census tract 20   | 53.9  | Yes   | Yes  |
| Census tract 26   | 44.7  | Yes   | Yes  |
| Census tract 33   | 40.7  | No  | Yes  |
| Census tract 37   | 49.1  | Yes   | Yes  |
| Todd County       | 33.1  | -   | No   |
| Wadena County     | 38.1  | =   | No   |
| Census tract 4803 | 45.0  | No  | Yes  |

<sup>a</sup> Crossed by CN alternative(s).

Route alternatives RA-07 and RA-08 each pose EJ concerns based on poverty. Both cross Census Tract 9400.02 (located entirely within the Leech Lake Reservation) in Cass County, where 54.2 percent of the population is below 185 percent of the poverty level, exceeding the county level of 34.2 percent (see Figure 11-7). None of the other census tracts through which these two alternatives cross exceeds its respective county levels. Two CN Alternatives, Alternate Rail Route to Superior North and Alternate Truck Route Gretna to Superior Terminal, also cross this census tract.

Although none of the other census tracts through which RA-07 and RA-08 cross exceeds their respective county levels, both RA-07 and RA-08 are adjacent or near census tracts that may have EJ concerns, depending on the proximity of the pipeline or construction work areas. The first is Census Tract 4506 in Beltrami County with 54.6 percent of the population below 185 percent of poverty level compared to a



county level of 38.9 percent. The other is Census Tract 4808.02 in Itasca County with 42.1 percent of the population below 185 percent of the poverty level compared to a county level of 31.1 percent. Additionally, CN Alternatives Alternate Rail Route to Superior North and Alternate Truck Route Gretna to Superior Terminal cross Itasca County census tract 4808.02.

Lastly, CN alternative rail route to Superior South poses EJ concerns with respect to poverty, crossing four census tracts in Crow Wing County. These census tracts (census tracts 9511, 9512, 9513.02) have 47.3 percent, 44.1 percent, and 39.7 percent of their populations below 185 percent of the poverty level, respectively, compared to a county level of 29 percent.

### 11.2.3 Reservations

The Applicant's preferred route and RA-03AM do not cross any reservation lands, but would cross within approximately 3.1 miles of the White Earth Reservation and within approximately 5.0 miles of the Fond du Lac Reservation.<sup>1</sup> Route alternatives RA-06, RA-07, and RA-08 each cross reservation land—RA-07 and RA-08 would cross both the Leech Lake and Fond du Lac Reservations, whereas RA-06 would cross the Fond du Lac Reservation. All routes, including the Applicant's preferred route, would cross treaty lands that are off-reservation; these lands may be used for traditional tribal uses, such as fishing, wild ricing, hunting and trapping, and/or gathering activities (as described in Chapter 9). Several CN Alternatives—Alternate Rail Route to Superior North, Alternate Rail Route to Superior South, and Alternate Truck Route Gretna to Superior Terminal—also cross the Leech Lake and Fond du Lac reservations.

Reserved treaty rights include access to traditional fishing areas. Tribal resources include walleye and trout fisheries, which are predominately used for subsistence. Traditional terrestrial game and waterfowl hunting grounds are habitat for a variety of subsistence resources, including deer, elk, ducks, geese, and turkey. Several federal treaties have reserved wild rice lakes for use by American Indian tribes, some of which are also considered Traditional Cultural Properties (Technical Assistance Services for Communities 2016). Wild rice, fish, and other treaty resources are sources of income and subsistence for tribes in the area. Treaty rights and tribal resources are important to American Indian tribes as both natural and cultural resources that reinforce their cultural identity. Additionally, the mental well-being of American Indian tribal members is linked to their tribal resources and access to their treaty rights.

Various land uses would be crossed by the route alternatives (RA-06, RA-07, and RA-08) within reservation boundaries. In addition to the individual land use categories that would be affected by the routes, various waterbodies and streams would be crossed. On the Fond du Lac Reservation, RA-06 and RA-07 would each cross seven rivers or streams and one waterbody, and RA-08 would cross five rivers or streams and one waterbody. On the Leech Lake Reservation, RA-07 would cross seven rivers or streams and four waterbodies, and RA-08 would cross 22 rivers or streams and five waterbodies. For RA-08, one of these waterbodies includes Nushka Lake, which is identified as a wild rice lake. RA-08 would directly affect less than 0.1 acre of the wild rice lake. No wild rice lakes would be crossed within the Fond du Lac Reservation (see Chapter 9 for additional detail with respect to tribal resources).

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<sup>1</sup> As shown in the Executive Summary, in Chapter 2, and in Chapter 9 (Figure 9-3), please note that the White Earth Reservation boundary used in this EIS is from the U.S. Census Bureau. Different boundaries would indicate that the Applicant preferred route and RA-03AM would cross the White Earth Reservation.

### 11.3 IMPACTS

As noted in Section 11.2, the route alternatives and the CN Alternatives cross several census tracts that present EJ concerns based on minority population and/or poverty. These are shown in Table 11.3-1.

**Table 11.3-1. Census Tracts with Environmental Justice Concerns**

| County     | Census Tract        | Route Alternative/<br>CN Alternative   | Environmental Justice<br>Indicator  |
|------------|---------------------|--|-------------------------------------|
| Carlton    | 9400                | RA06, RA07, RA08 / Alternate Rail Route to Superior North, Alternate Rail Route to Superior South                                | Minority population                 |
| Clearwater | 002                 | Applicant’s preferred route, RA-03AM / Alternate Rail Route to Superior North, Alternate Truck Route Gretna to Superior Terminal | Minority population                 |
| St. Louis  | 112                 | RA06, RA07, RA08 / Alternate Rail Route to Superior North, Alternate Truck Route Gretna to Superior Terminal                     | Minority population                 |
| Itasca     | 9400                | RA07, RA08 / Alternate Rail Route to Superior North, Alternate Truck Route Gretna to Superior Terminal                           | Minority population                 |
| Cass       | 9400.02             | RA07, RA08 / Alternate Rail Route to Superior North, Alternate Truck Route Gretna to Superior Terminal                           | Minority and Low-Income populations |
| Crow Wing  | 9511, 9512, 9513.02 | Alternate Rail Route to Superior South   | Low-income population               |

- Additionally, as noted in Table 11.3-1, route alternatives RA-06, RA-07, and RA-08 each cross reservation land—RA-07 and RA-08 would cross both the Fond du Lac and Leech Lake Reservations, permanently impacting between an estimated 80 acres and 260 acres, respectively; and RA-06 would cross the Fond du Lac Reservation, permanently impacting approximately 80 acres.
- The Applicant’s preferred route and RA-03AM would not cross reservation lands; however, they would cross ceded lands on which tribes exercise their treaty rights to access tribal resources. The other route alternatives (RA-06, RA-07, and RA-08) cross reservations, as well as ceded lands. These lands are used by American Indian tribes for fishing, wild ricing, hunting and trapping, and gathering activities. Wild rice lakes, many of which are designated for use by American Indians or designated as Traditional Cultural Properties, are present throughout the ROI and would be impacted.
- Route alternatives RA-07 and RA-08 would have the greatest direct impact on tribal resources, as they cross two reservations and ceded lands. RA-06 could also have some minor to major impacts on tribal resources within the Fond du Lac Reservation. Although the Applicant’s preferred route and RA-03AM do not cross reservation lands, they would impact resources on ceded lands.

- The EIS describes most impacts as minor to negligible in Chapters 5 and 6, with potential for major impacts in the absence of mitigation. The EJ analysis indicates that American Indian populations residing in the census tracts noted in Table 11.3 will experience disproportionately high and adverse impacts. As described in Chapter 9 of this EIS, the intensity of impacts felt by American Indian populations will be greater than depicted by quantitative analysis alone because of their cultural and spiritual relationship with the natural environment.

As described throughout Chapter 6, most of the impacts associated with the Project are construction-related and would be considered short term and localized primarily along the pipeline. Long-term impacts associated with operation would generally be limited to maintenance of a permanent pipeline right-of-way, the presence of pump stations, and the potential for accidental crude oil releases. However, low-income and minority communities have historically been burdened by pipelines and other projects resulting in adverse impacts. EJ communities typically lack resources, opportunity, mobility, and the power to influence decisions that affect the environment and their health. Thus, impacts that may be minor or moderate for the general population have the potential to have disproportionately high and adverse impacts on EJ communities who reside, work, recreate, or utilize the lands within or near the ROI.

Disproportionate and adverse impacts would occur on both low-income and minority populations in the ROI, as well as those populations residing or using lands in the vicinity of the Project, in particular, American Indian populations. RA-06, RA-07, and RA-08 would have direct impacts on reservation lands (Leech Lake and Fond du Lac Reservations). It is also important to note that while separate minority and low-income analyses were conducted above, most communities identified in this section as EJ communities based on income are also American Indian.

Resource-area impacts that have the potential to present disproportionately high and adverse impacts are summarized below. The impact discussion is based on both quantitative analysis (e.g., percentages of minority or low-income populations residing in ROI census tracts as compared to their respective counties) and factors that are unable to be quantified, such as the well documented American Indian connections to reservation land, treaty land, and natural resources within the ROI.

Based on the discussion of tribal resources in Chapter 9, any of the routes, route segments, and system alternatives would cross treaty lands and would have a long-term detrimental effect on tribal members. To further address local concerns, the sections herein also expand on unique impacts to American Indian populations residing in or utilizing lands in the ROI.

Impacts of the Project include the following:

- **Noise Impacts:** As noted in Section 6.2.2, increased noise levels could result from normal construction activities, such as clearing, grading, and trenching. The most significant noise impacts during construction would be the result of horizontal directional drilling (HDD) operations or blasting, if needed. During operation, sound levels associated with pump stations would increase over existing ambient levels. These levels would comply with Minnesota Noise Standards and would decrease over distance.
- **Visual Impacts:** As described in Section 6.2.3, generally, construction impacts on visual resources would be temporary to short-term and minor, as impacts would be limited to the period of construction until vegetation has reestablished. However, because of the proximity of some receptors such as residences, reservations, agricultural or open land, scenic byways and

special management areas—to active construction in the immediate foreground, impacts during construction could be major for some observers. During operation, aboveground facilities represent the biggest visual impact and would primarily affect residences. Several residences near would have direct views of pump station sites, resulting in permanent impacts on their viewsheds.

- **Air Quality Impacts:** Section 5.2.7 and 6.3.7 indicate that during construction, minor impacts on air quality would include an increase in dust from construction activities and an increase in emissions from vehicles, both from construction vehicles and worker vehicles.
- **Hunting, fishing and farming activities:** During construction, there would be prohibitions on hunting, fishing, and farming within the construction work area. The duration of these impacts would be temporary and short term. Any impacts resulting in a loss of access to treaty resources would disproportionately impact tribal communities and members culturally and have the potential to impact tribal economies.
- **Vegetation impacts:** As noted in Sections 5.2.3 and 6.3.3., the introduction of invasive species following construction alters plant composition within the construction and operation area and often extends well beyond the area. The duration of these impacts would vary. Some impacts would be temporary and short term. Long-term impacts on vegetation would be associated with maintenance of a permanent pipeline right-of-way and aboveground facilities. The loss of native vegetation and alteration of species composition would impact tribal use of resources.
- **Water resources:** As indicated in Sections 5.2.1 and 6.3.1, construction across waterbodies could result in increased turbidity and sedimentation, stormwater runoff and erosion from cleared vegetation, changes to stream flow due to HDD testing water, or degradation of aquatic habitat from instream construction. With implementation of mitigation measures, impacts would be minor and temporary. These impacts could result in the loss or health of wild rice beds and fisheries on reservation lands and in the ceded territories.
- **Impacts resulting from accidental crude oil releases:** A pipeline failure incident could result in the accidental release of oil. In the event of an accidental release of oil, the severity of impacts would depend on the location and type of resources within the area of the release, the amount of oil released, the location and existing conditions such as time of year. Details on resources exposed to a crude oil release are detailed in Section 10.4.

### 11.3.1 Tribal Impacts

Direct impacts from construction and operation would occur to tribal resources. The largest potential impact on low-income and minority populations, particularly those within the reservations that would be crossed, is a pipeline failure incident that would result in the accidental release of oil. Other impacts include water quality concerns and the introduction of invasive species and their effects on hunting, fishing, farming, gathering, and health.

A crude oil release along any of the routes has the potential to affect reservation lands, treaty lands, archaeological sites, and historical sites (see Table 10.4-28 in Chapter 10). An accidental release of oil within the boundary of the Leech Lake Reservation, the Fond du Lac Reservation, or on ceded lands, or a release affecting resources used by the tribes, would disproportionately and adversely affect these communities and would affect important tribal resources depending on the location and magnitude of the release. Between Clearbrook and Carlton, RA-07 and RA-08 overlap with the greatest amounts of reservation lands, followed by RA-06 and RA-03AM. The Applicant's preferred route does not overlap

with any reservation land. Using a 10-mile downstream ROI, from Clearbrook to Carlton, RA-08 overlaps with the most acreage of reservation land, followed by RA-07 and RA-06. The Applicant's preferred route and RA-03AM do not overlap with any reservation lands within the downstream ROI. None of the alternatives cross reservation land in the North Dakota-Minnesota border to Clearbrook or Carlton to Minnesota-Wisconsin border segments. However, all of the alternative cross ceded territories. Details on downstream impacts from an accidental release are discussed in Section 10.4.

From an American Indian perspective, waterbodies at risk from the proposed pipeline include any water directly downstream from a pipeline crossing. Pollution of these waters from a petroleum spill would create a significant hardship to traditional lifeways and spiritual and religious needs of the people. The risk of harm to the people who depend on these waters for sustenance of physical and spiritual needs is greatly magnified by the presence of traditional food sources, such as wild rice (Manoomin) and walleyed pike (ogaa). Depending on the location, severity, and magnitude of a spill, American Indian economies could be impacted. Socioeconomic impacts are described in Sections 5.3 and 6.5.

Impacts to water resources may be generally considered temporary to short term and minor, but could alter tribal access and use of water resources. However, the introduction of invasive species following construction would alter plant composition. Invasive plants diminish the overall health and well-being of the land and the enjoyment of the land by tribal members. Indirect impacts could occur on tribal members from temporary restrictions during construction of the Applicant's preferred route on non-reservation lands used by the tribe for hunting, fishing, wild ricing, or gathering. As discussed in Chapter 9, these activities are an essential part of the tribal community. A temporary loss of these activities during construction would result in negative economic and cultural impact on tribal members. The duration of the impacts would vary; some may be perceived as temporary and short term, but would affect tribal members in different ways. Permanent impacts to tribal use and access to resources would occur as a result of altering plant composition and the introduction of invasive species.

Wild parsnip (*Pastinaca sativa*) recognized by the Minnesota Department of Natural Resources to be an invasive noxious weed has been introduced to the Fond du Lac Reservation along existing pipeline rights-of-way. Contact with this plant can lead to extremely painful rashes over the skin. This is particularly important in the context of a pipeline within reservation lands and ceded territories that are used by local indigenous groups for food gathering. The Applicant's preferred route risks introducing wild parsnip into a new area because introduction is particularly susceptible in disturbed areas. Further introduction of invasive plants, such as wild parsnip, in the ceded territories of northern Minnesota and Wisconsin poses a clear danger to the safe exercise of Ojibwe treaty rights.

Along the Applicant's preferred route, RA-03AM, and RA-08, one census tract in Clearwater County was identified with a significantly higher minority population than the county level. This census tract includes a portion of the White Earth Reservation. None of the three routes would cross the reservation; however, they cross ceded lands used by the tribe for hunting, fishing, wild ricing, and gathering. Impacts on various resources (as described above) would occur throughout the census tract.

Of the three remaining route alternatives (RA-06, RA-07, and RA-08), each would cross one or more census tracts with meaningfully greater minority populations, specifically American Indian populations, and one tract with a meaningfully greater low-income population compared to the county levels. While various resources would be affected during construction, the greatest impact on the tribes would be associated with health and well-being and traditional use activities. Any Project-related activities that reduce or harm traditional uses or resources also negatively affects health and well-being. Impacts on

air quality and groundwater are expected to be minor and temporary. Impacts on several land use categories crossed by these three routes, including impacts on forested habitat, agricultural land, and water resources, indicate that the tribal communities would be disproportionately affected. Both RA-07 and RA-08 would cross the Leech Lake Reservation, and both routes would result in the loss of hundreds of acres of forested land. During construction, access to these areas would be restricted, limiting tribal members from hunting various wildlife that reside within forested cover. Given the importance of hunting to tribal members, both culturally and economically, this would represent a disproportionate adverse impact on the Leech Lake Reservation and its members. Construction of RA-07 and RA-08 could also impact agricultural operations on approximately 3 acres of cultivated crop land. Additionally, the loss of plant species that are used for subsistence and medicinal purposes would cause a disproportionate impact on the Leech Lake Band of Ojibwe. Lastly, an additional pipeline would contribute to the cumulative impacts already borne by the Leech Lake Reservation, which is currently crossed by 6 existing crude oil pipelines and 2 natural gas pipelines.

RA-06, RA-07, and RA-08 would cross the Fond du Lac Reservation. Closing of the hunting ground near the construction work area and the loss of access to hunting and gathering during construction would result in both a cultural and economic impact on the community. Given the importance of subsistence activities, this may represent a disproportionate adverse impact on the Fond du Lac Reservation and its members. Additionally, construction of RA-06, RA-07, and RA-08 could impact agricultural operations on up to approximately 1.5 acres of cultivated crop land. The abandonment and removal of the existing Line 3 would also affect American Indian tribes along RA-07, RA-08, and the Applicant's preferred route. If the existing Line 3 is abandoned and a new Line 3 is constructed within the Mainline corridor, the Leech Lake and Fond du Lac Reservations would see disproportionate and adverse impacts as a result of construction and abandonment. If the existing Line 3 is abandoned and the Applicant's preferred route, RA-06, or RA-03AM is selected, not only would the Leech Lake and Fond du Lac Reservations be subjected to impacts associated with abandonment or removal, but they also would experience new impacts associated with construction and operation of the pipeline across ceded lands. Selection of any new route would increase the impacts and associated risks of a pipeline. This includes the potential development of an entirely new pipeline corridor, effectively spreading the impacts and risks over a much larger area.

While the White Earth Reservation is not crossed by a route alternative or CN alternative, impacts to this reservation would be similar to the Leech Lake Band of Ojibwe and the Fond du Lac Reservation as noted above, affecting hunting, gathering, and harvesting activities.

An additional concern during construction are the influx of temporary workers. A recent study on the economic impacts of replacing Line 3 indicates that approximately half of the workers employed during the construction of the proposed Line 3 pipeline are expected to come from outside the 15-county area along the Applicant's preferred route.<sup>2</sup> The report estimates that 4,200 workers will be employed. Of those, 2,100 non-local construction workers are expected to be employed for 1.3 years, 6 days a week. The purpose of the report is to present the contribution this workforce will have on local economies, yet it also reinforces concerns that come with a large influx of temporary workers for an extended period of time. Concerns have been raised regarding the link between an influx of temporary workers and the potential for an associated increase in sex trafficking, which is well documented, particularly among Native populations (National Congress of American Indians Policy Research Center 2016). American Indian and minority

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<sup>2</sup> See *Enbridge Pipeline Construction Economic Impact Study*, April 2017 prepared by the University of Minnesota Duluth.

populations are often at higher risk if they are low-income, homeless, have a lack of resources, addiction, and other factors often found in tribal communities (MDH 2014). The addition of a temporary, cash-rich workforce increases the likelihood that sex trafficking or sexual abuse will occur. Additionally, rural areas often do not have the resources necessary to detect and prevent these activities.

An accidental release of oil within the boundary of the Leech Lake Reservation or the Fond du Lac Reservation, or a release affecting resources used by the tribes, would disproportionately adversely affect these communities and could affect culturally significant resources depending on the location and magnitude of the release.

From an Ojibwe perspective, waterbodies at risk from the proposed pipeline include any water directly downstream from a pipeline crossing. Pollution of these waters from a petroleum spill would create a significant hardship to traditional lifeways and spiritual and religious needs of the people. The risk of harm to the people who depend on these waters for sustenance of physical and spiritual needs is greatly magnified by the presence of traditional food sources such as wild rice (Manoomin) and walleyed pike (ogaa).

### **11.3.2 Operations Impacts**

As described throughout Chapter 6, operations impacts would largely be associated with impacts on vegetation associated with maintenance of a permanent pipeline right-of-way and aboveground facilities, as well as increase in nearby noise levels from pump stations over existing ambient levels. However, as described in Section 6.2.2, sound level increases would comply with Minnesota Noise Standards and would decrease over distance. None of the proposed pump stations along the Applicant's preferred route are located in census tracts within significantly greater minority or low-income populations. Therefore, any operations impacts related to noise or air quality impacts from pump stations are not expected to disproportionately affect minority groups or low-income populations. While locations for pump stations along the route alternatives have not been identified, applicants typically site these facilities in locations away from heavily populated areas and areas of cultural significance. Given the higher occurrence of EJ populations along the route alternatives, the chance of these communities being affected by aboveground facilities would be higher.

As described in Chapter 9, American Indian communities and individuals have unique health issues associated with historical and current trauma and structural racism. Data from the Minnesota Department of Health (MDH) indicate that American Indians in Minnesota have greater health disparities and poorer health outcomes compared to other racial and ethnic groups in Minnesota (MDH 2014). In its 2014 Report to the Legislature, the MDH concludes (MDH 2014):

*Causes of health inequities in American Indian communities are directly linked to determined and deliberate efforts of American federal, state and local governments to uproot the American Indian people from their land, eradicate their languages and destroy their way of life. First among these is the uprooting of the people from their traditional lands, a major factor that scientists recognize creates psychological and health impacts for generations. Displacement brought about a loss of traditional ways of making a living, of providing food for the table, and of being in relationship with one another. To replace these losses the American government provided "commodity" foods: bleached white flour instead of whole grain wild rice; processed pasta and cheese instead of lean protein. Diabetes rates are now endemic among American Indians throughout the U.S., including Minnesota, and the rise of these rates can be directly related to the introduction of foodstuffs with poor nutritional value. The loss of a way of life also*

*has led to unemployment, poverty, and the high-risk behaviors that accompany the loss of hope and meaning; these are some of the systemic, socially-determined health inequities that need to be overcome to achieve health equity for American Indians in Minnesota.*

The impacts associated with the proposed Project and its alternatives would be an additional health stressor on tribal communities that already face overwhelming health disparities and inequities, such as diabetes, asthma, addiction, poverty, and unemployment.

## **11.4 SUMMARY AND MITIGATION**

Disproportionate and adverse impacts would occur to both low-income and minority populations in the ROI, as well as those populations residing or using lands in the vicinity of the Project, in particular, American Indian populations. RA-06, RA-07, and RA-08 would have direct impacts on reservation lands (Leech Lake and Fond du Lac Reservations). Based on the discussion of tribal resources in Chapter 9, any of the routes, route segments, and system alternatives would cross treaty lands and would have a long-term detrimental effect on tribal members. A quantitative analysis of impacts contained in Chapter 6 and summarized above characterizes impacts as short-term or permanent (construction-related or operations), or by extent (ROI, construction work area, permanent right-of-way), and identifies a preferred route based on the types/magnitude of impacts and other factors. However, as summarized in Chapter 9, from a tribal perspective, the impacts cannot be categorized by duration or extent. Additionally, from a tribal perspective, each alternative affects tribal resources, tribal identity, and tribal health, and each route would negatively affect tribal resources and tribal members.

Within the existing regulatory framework, a finding of “disproportionate and adverse impacts” does not preclude selection of any given alternative (EPA 2016). This finding does, however, require detailed efforts to avoid, mitigate, minimize, rectify, reduce, or eliminate the impact associated with the construction of the Project or any alternatives. The CEQ recommends evaluating mitigation options by eliciting “the views of the affected populations on measures to mitigate a disproportionately high and adverse human health or environmental effect on a low-income population, minority population, or American Indian tribe and should carefully consider community views in developing and implementing mitigation strategies.” Furthermore, mitigation measures identified in an EIS “should reflect the needs and preferences of affected low-income populations, minority populations, or Indian tribes to the extent practicable.” As described by the tribes, however, there are no mitigation measures that could restore or replace the loss of any tribal resources.

### **11.4.1 Resource-Specific Mitigation**

To address the impacts identified in the above sections, the following mitigation measures may be employed by the Applicant. These measures would reduce most impacts to EJ communities to minor or negligible.

- Pump stations would likely be sited away from heavily populated areas and areas of tribal significance.
- Air quality impacts would be reduced by Applicant-proposed measures, such as dust suppression, limiting idling by construction vehicles, and covering spoil piles. Specific mitigation plans may be developed to address impacts of concern to affected communities.



- To address the potential for sexual abuse or sex trafficking, Enbridge can fund or prepare and implement an education plan or awareness campaign around this issue with the companies and subcontractors it hires to construct, restore, and operate the pipeline. Enbridge can also provide funding to local and tribal law enforcement to identify and stop sex trafficking.
- Impacts on water resources would be addressed by implementation of an Environmental Protection Plan (Appendix E).
- Development of site specific and resource specific mitigation plans with affected communities if permits are issued.
- Spill prevention is the most critical component to avoiding impacts from a crude oil release. If a release occurs, the most important actions to reduce environmental impacts are to minimize the size and spread of the release by implementing a rapid, coordinated, and effective spill response based on an established action plan. Section 10.5 provides information on Crude Oil Release Prevention Programs and Measures, Emergency Response Planning and Preparedness, and Initial Oil Spill Containment and Response Methods.
- Cost recovery can be obtained from industry for natural resource damage caused by the release of oil or hazardous substances to the environment under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act (OPA 90), and several state statutes. Natural resources are defined as land, air, biota, groundwater, and surface water. A federal or state government entity, an American Indian tribe, or other entity acting as a public trustee of a natural resource may file claims for damages to natural resources. Costs for damages that are recoverable under OPA 90 include the following:
  - Natural Resources: Damages for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing the damage, which are recoverable by a U.S. trustee, a state trustee, an American Indian tribe trustee, or a foreign trustee.
  - Real or Personal Property: Damages for injury to, or economic losses resulting from destruction of, real or personal property, which are recoverable by a claimant who owns or leases that property.
  - Subsistence Use: Damages for loss of subsistence use of natural resources, which are recoverable by any claimant who uses natural resources for subsistence that have been injured, destroyed, or lost, without regard to the ownership or management of the resources.
  - Revenues: Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which are recoverable by the federal government, a state, or a political subdivision thereof.
  - Profits and Earning Capacity: Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which are recoverable by any claimant.
  - Public Services: Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, due to a discharge of oil, which are recoverable by a state, or political subdivision of a state.

Details on liability and compensation in the event of a release are detailed in Section 10.6.

### 11.4.2 Tailored Mitigation

A primary goal of Executive Order 12898 is to provide EJ communities with meaningful access to public information on, and an opportunity for public participation in, matters related to human health and the environment. Mitigation measures beyond those already described in Chapters 5 and 6 may include a variety of approaches for addressing potential effects and balancing the needs and concerns of the affected community with the requirements of the action or activity.

With respect to the development of this EIS, the following outreach methods were employed to ensure that residents and stakeholders within the ROI were able to participate in the regulatory process:

1. Potential effects and mitigation measures were identified through direct consultation with American Indian tribes, and through coordination with the natural resources and cultural resources departments of the tribal bands;
2. Scoping and Draft EIS public meetings were held on reservations and in each county within the ROI, and at varying times to ensure maximum participation ;
3. Large display advertisements announcing each public meeting were placed in local newspapers throughout the ROI;
4. Notices were drafted in plain English, including language regarding accessibility. The Notice was distributed to landowners along each proposed route and to stakeholders who requested to be added to the Applicant's mailing list;
5. Copies of the Draft EIS were available at public libraries within the project area and at tribal libraries;
6. The format of the Draft EIS meetings allowed for direct, one-on-one interaction with agency staff, as well as a more formal opportunity to submit public comments through a facilitated comment session.
7. Draft EIS meeting materials were public-friendly (posters, handouts, meeting guide), and copies of the Draft EIS were available in both hard copy and electronic format.

While the mitigation measures may be appropriate and straightforward within the framework of the existing regulatory process, the combination of tribal identity and relationship to the land and the rights tribal members have in the ceded territories complicates the traditional notion of mitigation. The ceded territories and the rights that go with them are not mobile and cannot be transferred. Tribal impacts are magnified because there would be impacts associated with abandonment and removal of the existing Line 3, and there would be additional impacts associated with the construction of Line 3 in a new location. While non-quantifiable impacts are difficult, if not impossible, to mitigate, tribes feel they should be entrusted with the inspection, monitoring, and maintenance activities in and through their lands and territories, as they are most familiar with their resources. If tribes were given a more active role in the monitoring and inspection of pipelines, they would be better prepared to address leaks or spills that could occur within reservation boundaries.

If the Project is approved, additional mitigation measures can be evaluated in the final Certificate of Need or route permit decision. This provides an additional avenue for public notice and involvement. The types of mitigation that can be considered include the following:

- Planning for and addressing indirect impacts prior to Project construction with affected populations;
- Providing assistance to an affected community to ensure that it receives at least its fair (i.e., proportional) share of the anticipated benefits of the proposed action (e.g., through job training, community infrastructure improvements);
- Establishing a community oversight committee to monitor progress and identify potential community concerns;
- Requiring financing at the outset of the Project for both implementing the measure and monitoring its effectiveness, and ensuring clearly defined monitoring guidelines are in place;
- Requiring monitoring reporting, which should be made available to the public; and
- Identifying clear consequences and penalties for failure to implement effective mitigation measures.

## 11.5 REFERENCES

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