

**ENBRIDGE LINE 3
REPLACEMENT PROJECT
License for Utility to Cross
State Lands No. ULND010332**

**FINDINGS OF FACT, CONCLUSIONS
AND ORDER**

License for Utility to Cross State Lands No.
ULND010332

Enbridge Line 3 Replacement Project

11-12-2020

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

**In the Matter of the Application for
License for Utility to Cross State Lands No. ULND010332**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF COMMISSIONER**

After review of the application, due investigation of relevant information, and consideration of comments, and based on the information and statements contained in the license application submitted by Enbridge Energy, Limited Partnership (“Enbridge”), the applicant’s description of the project and work proposed to be undertaken, public comments, and supplemental information in the administrative record or otherwise available to the Minnesota Department of Natural Resources, the Commissioner of the Minnesota Department of Natural Resources (“DNR”) makes the following:

FINDINGS OF FACT

I. EXECUTIVE SUMMARY

1. Pursuant to the requirements of Minnesota Statutes section 84.415 and Minnesota Rules chapter 6135, Enbridge applied for a license to cross state land with a utility infrastructure project as part of its proposed Line 3 Replacement Pipeline Project (“Project”; the term “project” is used to refer to the state land crossing component of the overall Project). The application seeks approval for construction and operation of a 36-inch diameter pipeline and associated facilities across state-owned parcels of land located in Clearwater, Hubbard, Wadena, Cass, Aitkin, St. Louis, and Carlton Counties. These Findings of Fact only address Enbridge’s application for a license to cross state land (the “Application”). Other license and permit applications will be addressed in separate findings.

2. The Project is intended to address mechanical integrity deficiencies on the existing Line 3 pipeline. The Project proposes to install 337 miles of new 36-inch diameter pipe and associated facilities from the North Dakota-Minnesota border to the Minnesota-Wisconsin border. Enbridge’s proposed pipeline route would generally follow the existing Line 3 pipeline from the North Dakota-Minnesota border in Kittson County to Enbridge’s terminal facility in Clearbrook, Minnesota. From the terminal in Clearbrook, the pipeline would proceed south and generally follow the existing Minnesota Pipe Line Company’s right-of-way to Hubbard, Minnesota. From Hubbard, the route would proceed east, following existing electric transmission line and railroad rights-of-way and traversing greenfield areas until crossing the

Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota. The route would end at the existing Enbridge terminal in Superior, Wisconsin.

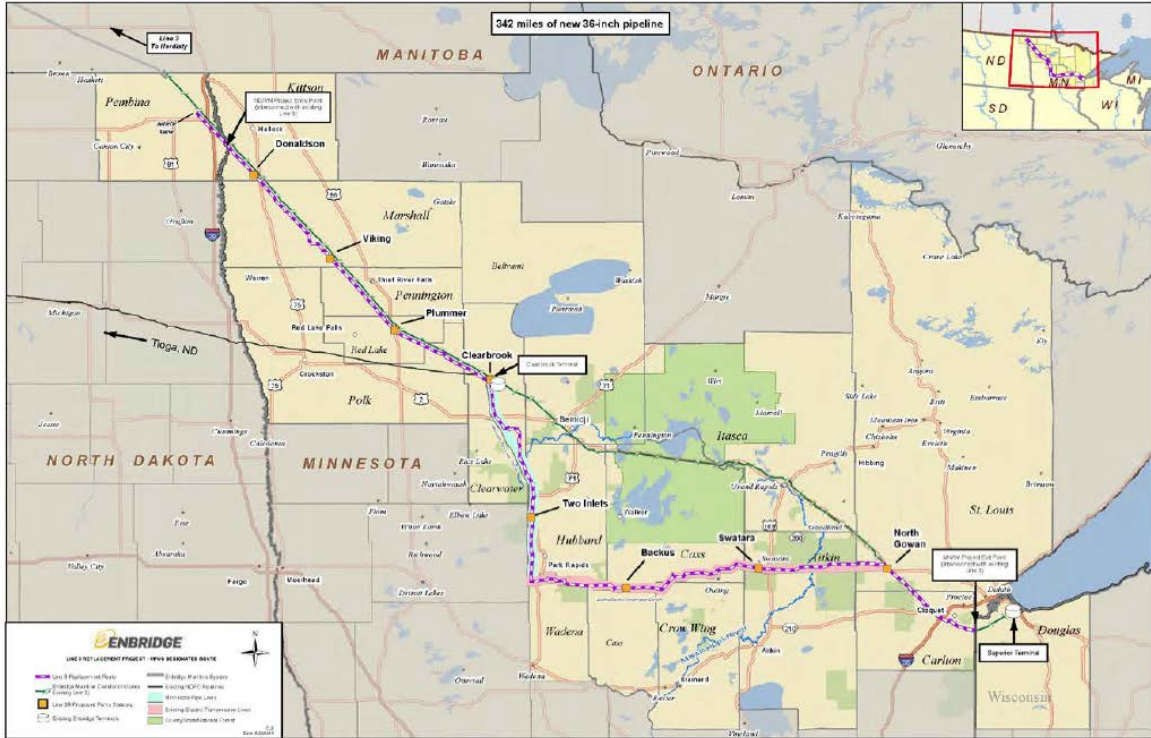
3. The Project has undergone significant review from the Public Utilities Commission (“PUC”). On April 24, 2015, Enbridge filed separate applications for a certificate of need (“CN”) and routing permit (“RP”) for the Project. The PUC authorized the Department of Commerce, Energy Environmental Review and Analysis Unit (“EERA”) to prepare an environmental impact statement (“EIS”). PUC referred the CN, RP, and EIS adequacy determination to the Office of Administrative Hearings for contested-case proceedings. Following the contested-case proceedings, and following a revised FEIS submitted by EERA, the PUC eventually found the revised FEIS to be adequate, and granted the CN and RP contingent on certain modifications and conditions. The Minnesota Court of Appeals reversed the FEIS order for its failure to address the potential impacts to the Lake Superior watershed and remanded to the PUC for further proceedings. On remand, the PUC requested that EERA submit a second revised FEIS that included an analysis of the potential impact to the Lake Superior watershed. On May 1, 2020, after receiving public comments and hosting public meetings, PUC issued an order finding the second revised FEIS adequate and granting the CN and RP subject to certain modifications and conditions.

4. As required by Minn. R. 4410.7055, DNR has reviewed the second revised FEIS and it serves to inform DNR’s current findings.

5. The license Enbridge seeks in this proceeding relates solely to the Project’s crossing of state land administered by DNR. A multitude of other permits and regulatory requirements will also apply to the Project prior to construction. Required authorizations from DNR include four separate water appropriation permits, two public waters work permits, a threatened and endangered species takings permit, a utility license to cross public waters, and an approved calcareous fen management plan. The Project would also cross wetland and streams areas not covered by DNR licenses or permits. These wetland and stream crossings are regulated by the Army Corp of Engineers (“USCOE”) Clean Water Act section 404 permit and the Minnesota Pollution Control Agency (“MPCA”) Clean Water Act section 401 Water Quality Certification.

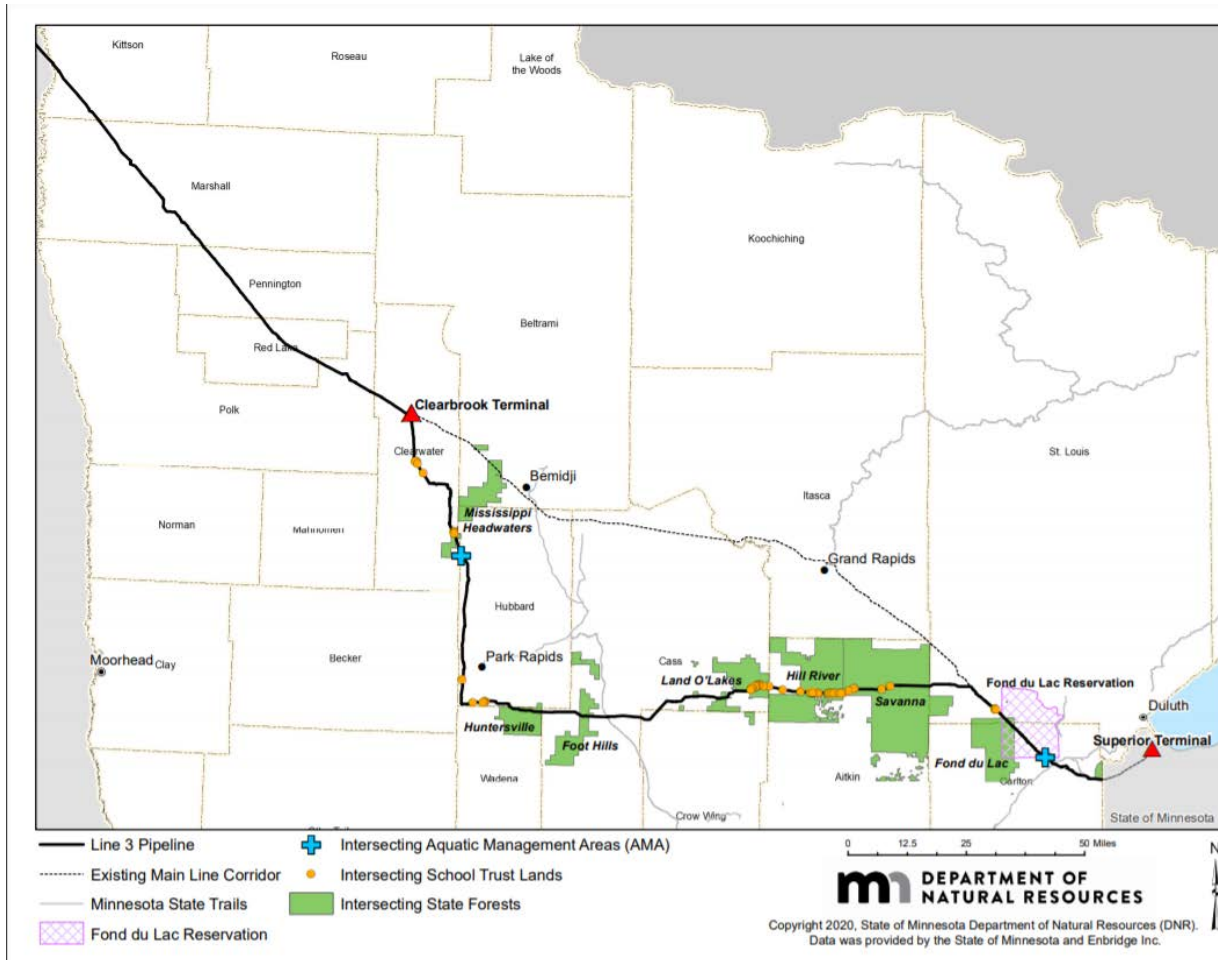
II. ENVIRONMENTAL SETTING OF THE PROJECT

6. As shown below, the proposed Project transects thirteen Minnesota counties: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Aikin, St. Louis, Crow Wing, and Carlton Counties.



7. The Project proposes to maintain a 50-foot wide permanent corridor along the pipeline route. During construction, the Project proposes to temporarily widen the corridor to 120-foot wide in uplands and 95-foot wide in wetlands. The pipeline route also includes additional temporary construction workspaces (“ATWS”).

8. The Project proposes to cross 178 state parcels spanning 35.6 total miles. The state lands are located in seven counties: Clearwater, Hubbard, Wadena, Cass, Aitkin, St. Louis, and Carlton. The state lands consist of State Forests, School Trust lands, and Aquatic Management Areas. The locations of the state lands in relation to the Project pipeline route are shown in the map below.



9. The Project proposes to use additional state land parcels for ancillary purposes, including access, water appropriation, infiltration, and peatland monitoring wells. These state land uses do not fall under the utility license to cross state land. DNR has reviewed and has authorized these state land uses through land leases (Lease #s LMIS010464, LMIS010461, LMIS010489, LMIS010380, LMIS010460, LMIS010383, and LMIS010386).

10. The Project proposes 72 water crossings, of which 66 are public water crossings subject to DNR licensing. The crossings consist of five water basins, 61 watercourses, and six wetlands. Five of the public water crossings are designated trout stream tributaries. The 66 public water crossings subject to DNR licensing will be addressed in the utility license to cross public waters. The six wetland crossings are of public waters wetlands located within private lands. Five of these public water wetland crossings located on private lands are addressed in the Work in Public Waters Permit No. 2018-3419. The other wetland, at mile post 963.7 in Hubbard County, does not require a work in public waters permit as the activity is vegetation removal by cutting, and no excavation or filling will be taking place. An Aquatic Plant Management permit is also not needed for this wetland crossing per Minn. R. 6280.0250, subp. 1(D). The Project

crosses wetlands on state lands that are not public waters wetlands. These wetlands are covered by the utility license to cross state land and are listed in attachment G of the Application.

11. The Project would also cross wetlands and streams not covered by DNR licenses or permits. These wetland and stream crossings are regulated by the USCOE Clean Water Act section 404 permit and the MPCA Clean Water Act section 401 Water Quality Certification.

III. APPLICATION AND COMMENT PROCESS

12. Enbridge proposes to cross state lands administered by the DNR located in Clearwater, Hubbard, Wadena, Cass, Aitkin, St. Louis, and Carlton Counties. Because the utility is proposing to cross state public lands, a DNR utility license is required. *See* Minn. Stat. § 84.415, subd. 1.

A. Enbridge Submits Application to DNR for a License to Cross State Lands

13. Enbridge submitted an initial application to the DNR for a license to cross public lands for the Project (“initial version of the Application”) on October 1, 2015. The initial version of the Application proposed the Line 3 replacement along with the proposed Sandpiper Pipeline project. The initial version of the Application was later suspended.

14. On January 31, 2018, following environmental and regulatory reviews since the initial version of the Application, Enbridge submitted draft pre-Application materials for a License to Cross Public Lands (Rev 0) that revised the information in the initial version of the Application (“Pre-Application Materials”). The Pre-Application Materials contained information about the applicant, a description of the Project, statements on land requirements, description of construction activities, description of special features on the state lands, and status of environmental and regulatory reviews and authorizations, along with supporting figures, maps, photographs and technical information.

15. In April 2018, DNR met with Enbridge and provided review comments and feedback to Enbridge on the Pre-Application Materials. The purpose of DNR’s review of the Pre-Application Materials was to give Enbridge perspective on information and topics that would need to be addressed as part of the re-submitted land crossing license application. DNR’s review comments and feedback included suggestions on application organization to enhance the efficiency and effectiveness of DNR’s application review, recommended an updated Natural Heritage Information review, outlined a separate review process for dealing with the disposition of the existing Line 3, requested a winter work plan, provided limitations on wood chipping and mulch depths, notified Enbridge of a planned timber sale in Huntersville State Forest and required Enbridge to work to resolve conflicts with the timber sale, requested wildlife friendly erosion control and pollinator friendly seed mixes, indicated the need to address recreational

uses, including hunting, Grant-in-Aid trails, and unauthorized ATV use, and described the need for Enbridge to provide access road locations and heavy equipment pipeline crossing locations.

16. On September 13, 2018, Enbridge submitted a revised Application for a License to Cross Public Lands (“second version of the Application”).

17. Enbridge submitted a \$3,500 check covering the license application fee in conjunction with the second version of the Application. DNR returned the application payment on September 18, 2018, due to the Project not yet receiving approval from the PUC for a route permit.

18. The second version of the Application contained updated information from the Pre-Application Materials. The second version of the Application included a completed DNR application for license to cross state lands; information about the applicant; Project overview and purpose; a description of the Project; statements on land requirements; description of general construction activities, operation activities, activities on state lands, and environmental inspection and monitoring; and status of environmental and regulatory reviews and authorizations; along with supporting figures, maps, photographs and technical information. The information in the second version of the Application incorporated comments and feedback on the pre-application materials.

19. On October 29, 2018, Enbridge re-submitted a \$3,500 payment covering the license fee for the second version of the Application.

B. The Application for a License to Cross State Lands Was Circulated for Public Comment

20. On March 18, 2019, DNR posted all of Enbridge’s license and permit applications and supplemental materials on the DNR Line 3 Permitting website <https://www.dnr.state.mn.us/line3/index.html> for a 60-day comment period, which closed on May 17, 2019. The second version of the Application was among the application materials posted for public comment. The DNR published a GovDelivery (email newsletter) notice and press release notifying the public of the open comment period. Prior to the public comment period, DNR issued GovDelivery notices informing recipients of the second version of the Application and notifying them of its availability on the permitting website.

21. DNR held informational webinars on April 29, April 30, and May 6, 2019, to provide information to the public about the Project and receive public comment. The informational webinars were recorded and are available on the DNR Line 3 Permitting website (<https://www.dnr.state.mn.us/line3/index.html>).

22. DNR received nearly 10,000 public comments on all of the draft applications combined. The vast majority of these comments were form letters. Form letters were identified when two or more unrelated individuals submitted identical or substantively identical submissions, or when a submission was determined to consist nearly entirely of text provided for the purpose of mass e-mailing. Within the form-letter submission, there were numerous form-letter variants consisting of standard form-letter text that was altered through deletion or addition of sender-composed text.

23. Not all submissions contained substantive comments on the applications. For example, many commenters offered opinions as to whether the Project should or should not proceed, with minimal or no additional content relating to the draft applications.

24. Given the large number of submissions and individual comments received during the public-comment process, the DNR grouped similar comments into themes and considered those themes individually in lieu of responding to each individual comment.

i. Comments Received from The 1855 Treaty Authority, the Red Cliff Band of Superior Chippewa, and Honor the Earth and DNR Response

25. The 1855 Treaty Authority commented that the Project will cross state forests where Band members hunt, fish, trap and gather. ***DNR Response:*** The license would not prevent Band members from hunting, fishing, and gathering in areas crossed by the pipeline. Further, as described below, the project would not cause pollution, impairment or destruction that would interfere with hunting, fishing or gathering. Enbridge is required to comply with comprehensive restoration and revegetation requirements under the EPP, which are designed to restore impacts from construction.

26. The Red Cliff Band of Superior Chippewa (“Red Cliff”) commented, “Any permits that allow the proposed Line 3 to cross State Forests: Mississippi Headwaters, Huntersville, Foot Hills, Land O’Lakes, Hill River, Savanna, [and] Fond du Lac would impede the Anishinaabe access to their Treaty Rights. Fond du Lac State Forest is within territory that Lake Superior Chippewa retained treaty rights under the 1854 Treaty of LaPointe.” ***DNR Response:*** The PUC, not the DNR, has the authority to issue the pipeline routing permit for the Project pursuant to Minnesota Statutes section 216G. The PUC has issued a RP authorizing the route through State Forests. Enbridge reached a separate agreement with the Fond du Lac Band of Lake Superior Chippewa providing authorization for the easternmost portion of the Project to be built along the pipeline corridor in which the existing Line 3 passes through the Fond du Lac Reservation in Carlton and St. Louis Counties. The license would not prevent Band members from hunting, fishing, and gathering in areas crossed by the pipeline. Further, as described

below, the project would not cause pollution, impairment or destruction that would interfere with hunting, fishing or gathering.

27. Red Cliff commented, “Peatland Areas are extremely sensitive areas where construction and restoration can be very difficult. Should the MDNR approve this permit despite this concern, construction should be limited to when the ground is solidly frozen to minimize environmental harm.” ***DNR Response:*** The license contains a special wetland/peatland winter construction and mitigation provision that requires Enbridge to construct in sensitive peatland areas along three state land segments during winter to the maximum extent feasible, contains enhanced construction monitoring requirements, and ensures that Enbridge will mitigate impacts to these areas. This special provision is discussed in detail in paragraph 43 below.

28. Red Cliff commented, “Miskwabekaang has no faith in Enbridge’s ability to adequately protect the environment or their ability to execute their Environmental Protection Plan given Enbridge’s history [of oil spills].” ***DNR Response:*** Enbridge is legally required to comply with the license terms and conditions, including special provisions and attached Application materials, in addition to a multitude of other permits and requirements from the DNR and other regulatory agencies. Enbridge is required to provide Independent Environmental Monitors (IEM) for determining permit compliance as a condition of the PUC Route Permit. This condition requires the IEM to be under the control of and report to Department of Commerce, MDA, MPCA and the DNR. These monitors will track Project compliance with permit conditions. Any non-compliance will be addressed by the appropriate regulatory agency. DNR agency staff will also perform spot check inspections to confirm compliance with DNR license conditions.

29. Comments were received from the Honor the Earth, a non-profit organization that raises awareness and financial support for Indigenous environmental justice (“Honor the Earth”), during the public comment period from March 18, 2019, to May 17, 2019. Below is a summary of these comments that pertain to the proposed license and DNR’s responses to these comments.

30. Honor the Earth made a comment regarding the high priority area of 19.64 acres of permanent conversion for a work space and access road located on the east end of the stretch at mileposts 1084.6 to 1084.9. The work space site is adjacent on the north to Savanna Portage State Park and designated DNR old growth that is a wet ash native forest community. This forest type has conservation status ranks ranging between ‘vulnerable to extirpation’ to ‘apparently secure-uncommon but not rare.’ This forest community extends into the work space that is planned for harvest and permanent conversion. Because this part of the wet forest site will be permanently converted to another vegetation type, we recommend this 19.6 impact area be mitigated at a higher rate. Avoid any impacts to the adjacent state park lands at this location. Another area of priority is 0.51 acres at mile marker 1072.7 (wetland w-51n23w30-e), which

occurs within this large landscape area of high biological significance. How does the DNR expect Enbridge to replace old growth forest? Enbridge should, by no means, be allowed to impact these pristine old growth forests in such an ecological diverse and culturally important area. **DNR Response:** Pursuant to the NHIS Review and Avoidance Plan, Enbridge is required to stake construction exclusion areas where old-growth forest is located adjacent to the boundaries of construction workspace and access roads, in order to minimize impacts to the old-growth. Enbridge's additional temporary workspace within old-growth forest was designed to be the minimal size to allow for safe and effective construction of the Project as another way to minimize impacts. Old growth forest removed for pipeline construction will not be replaced. Wetland impacts within the areas described in the comment are proposed to be mitigated as special wetlands, which has a higher mitigation ratio, within the USCOE Clean Water Act section 404 permit and the MPCA Clean Water Act section 401 Water Quality Certification.

31. Honor the Earth, in following up on a DNR comment to the section 404 permit where DNR recommended the USCOE consider a higher mitigation ratio for native plant community types, and asked what does a higher mitigation ratio look like to DNR? Some of these species could be lost permanently due to the neglect of Enbridge and/or their contractors and sub-contractors. History has shown that pipeline construction reaps a heavy toll on wetland ecosystems. There is little evidence that pipeline construction companies understand an environmental ethic that requires protection of rare species. **DNR Response:** The NHIS Review and Avoidance Plan details requirements and methods Enbridge must undertake for avoidance and minimization of impacts to native plant communities. Enbridge coordinated with DNR to modify workspaces to avoid impacts to High or Outstanding Sites of Biodiversity Significance and native plant communities ranked as S1-S3. Examples include removing an additional temporary workspace at milepost 921.9 based on DNR's comments, reducing clearing impacts from 50 to 30 feet at milepost 991.1 to 991.3 and 993.1 to 993.4, moving additional temporary workspace off state land at milepost 991.4, and reducing additional temporary workspace at multiple locations. In addition, section 5.2.2 of the NHIS Review and Avoidance Plan requires Enbridge to use best management practices to avoid or minimize impacts to High or Outstanding Sites of Biodiversity Significance and native plant communities ranked as S1-S3. These best management practices include redundant erosion controls; wildlife-friendly erosion and sediment control using biodegradable netting; limiting areas where burning may occur; minimizing the amount of soil disturbance to topsoil after it is replaced over the subsoil; avoiding hydroseeding (except for on steep slopes to ensure seed is maintained in place until revegetation); beginning cleanup and rough grading soon and not later than the end of the following workday after backfilling the trench; maintaining temporary stabilization, erosion, and sediment controls until permanent cover is established; compensation to DNR for woody revegetation planting within temporary workspace and ATWSs; limiting mulch and mechanically cut woody debris a uniform broadcast of less than two-inch thickness and in a manner that maintains visible ground; and special measures to manage invasive and noxious species in these areas under the Invasive and

Noxious Species Management Plan. There is no mitigation for impacts to upland portions of these plant communities. Wetlands within these areas are proposed to be mitigated as special wetlands, which have a higher mitigation ratio, within the USCOE Clean Water Act section 404 permit and the MPCA Clean Water Act section 401 Water Quality Certification. Lastly, the commenter is concerned that Enbridge does not have an environmental ethic for protecting rare species. Under the license and other regulatory requirements, there will be independent environmental monitors onsite during construction of the project. The independent environmental monitors are independent contractors who will observe construction, provide an ongoing field presence, and regularly report observations to the DNR whether Enbridge is complying with license requirements. DNR staff will also monitor project construction, including random spot checks of Enbridge's compliance with license requirements.

32. Honor the Earth submitted questions regarding information in the Application materials that indicated Enbridge will delay seeding during frozen ground conditions until the applicable spring seeding period or will complete dormant seeding where conditions allow (i.e., no snow cover). Enbridge will install temporary erosion controls during frozen conditions. Honor the Earth asked: How will this impact erosion? Has the DNR reviewed the project timeline from the basis of their own construction restrictions and Enbridge's planned schedule? It is realistic to get the activities done they want to perform in the seasons they plan to do them? ***DNR Response:*** The PCVMP directs the conditions in which Enbridge will use dormant seeding and erosion control. Enbridge will be required to use temporary erosion and sediment controls for dormant seeding unless DNR specifies otherwise. Enbridge will be required to put temporary erosion control measures in place within 48 hours of seeding. Enbridge will use certified weed free straw, hay, or mulch. Enbridge will apply additional erosion control best management practices as requested by the independent environmental monitor. Erosion control during construction will be addressed by a Stormwater Pollution Prevention Plan filed under the MPCA Construction Stormwater General Permit. Regarding DNR construction restrictions and Enbridge's planned construction schedule, the DNR engaged with Enbridge to understand components of the project that could be constructed during winter. DNR then prioritized certain wetland/peatland areas for winter construction (see paragraph 43) to gain maximum effect from construction that can be achieved during winter.

33. The DNR provided resource review comments on the second version of the Application to Enbridge through the course of several in-person and electronic meetings, including an in-person meeting on June 4, 2019.

ii. Comments Received from the Public Generally and DNR Response

34. Comments were received from the public pertaining to the license to cross state lands during the public comment period from March 18, 2019, to May 17, 2019. Below is a summary of key themes that emerged in the comments and DNR's responses to these comments.

35. A public commenter was concerned about deep tillage destroying native soil ecosystems and about how soil compaction will be mitigated. **DNR Response:** Soil compaction is addressed in the approved Environmental Protection Plan dated November 6, 2020 (rev. 11) ("EPP") and Post-Construction Vegetation Management Plan for Public Lands and Waters dated November 6, 2020 (rev. 4) ("PCVMP"). The EPP and PCVMP are part of the Application and are incorporated into the license, meaning Enbridge is required to comply with those plans. The EPP and PCVMP detail the manner of Enbridge's required seedbed preparation and replanting. Per section 1.18 the EPP, Enbridge will not be allowed to use field cultivators or chisel plows on state lands, which includes Minnesota Biological Survey sites ranked High and Outstanding and native plant communities ranked S1-S3.

36. There was a public comment indicating that crossing methods and timing should be mandated by the DNR and MPCA to ensure construction occurs during the least impactful months. The commenter indicated that if it is impossible to find a time without significant impacts, the Project should not be permitted. Any decisions that Enbridge is making should have a clear decision making matrix and must be made in conjunction with the third-party environmental monitor. **DNR Response:** Enbridge's construction and operation of the pipeline is subject to the terms and conditions of the DNR license and other applicable legal requirements. Construction will be monitored by an independent environmental monitor who provides regular reports to the DNR and other regulatory agencies. The Natural Heritage Information System ("NHIS") Review and Avoid Plan, which Enbridge will be required to comply with as part of the license, provides a review of NHIS data and other DNR data sources for rare or sensitive ecological resources along the Project corridor, an assessment of the potential for impacts on those resources, and a description of measures for avoiding or minimizing impacts. Pursuant to the NHIS Review and Avoidance Plan, Enbridge is subject to certain seasonal restrictions, such as not removing trees during the months of June and July to minimize the potential for impacts on northern long-eared bats unless a bat protection plan has been approved by the DNR. Enbridge is also subject to a special provision under the license for constructing in sensitive wetland/peatland complex areas. The Application includes site specific details for construction activities within these wetland/peatland complexes. Under the special provision, Enbridge must attempt to construct in these areas during winter to the maximum extent feasible, depending on construction start dates for the Project. In the event Enbridge cannot completely construct in the sensitive areas during winter, Enbridge must submit for DNR's review and approval a revised peatland/wetland site construction plan that demonstrates how winter construction will be implemented to the maximum extent possible, including information to support why any specific winter construction is not feasible. The plan must also provide construction details for

peatland/wetland construction that will be implemented to minimize impacts to these resources. In addition Enbridge must minimize impacts by the following: (1) following site-specific construction plans for crossing numbers 32-35, 86-110, and 143-169; (2) implementing enhanced environmental construction monitoring to ensure that Enbridge properly utilizes best management practices, including enhanced monitoring requiring an additional independent environmental monitor at each construction spread where non-winter construction will occur and additional DNR staff monitoring of these sites, with Enbridge responsible for the costs of this additional DNR staff monitoring; and (3) the Post-Construction Wetland and Waterbody Monitoring Plan (“PCMP”), an interagency agreement with the MPCA and USCOE, includes rigorous vegetation and shallow groundwater monitoring in these areas. If this monitoring identifies unanticipated impacts to these areas, Enbridge will be required to submit a corrective action plan for DNR review and approval. Enbridge will be required to implement the corrective action plan within one year. If the DNR determines the corrective action plan did not sufficiently remediate the impacts, the DNR can conduct an assessment of the impacted area to determine if additional compensatory mitigation is needed. This assessment could result in additional wetland mitigation by Enbridge or result in a monetary fine to Enbridge. Any money received from Enbridge as a result of this assessment will be used for administration, planning and implementation of wetland restoration activities on state land. Enbridge is also required under the special provision in the license and the PCMP Plan to provide financial assurance that DNR can access to perform the restoration work, restore other wetlands and waterbodies in the area, or purchase wetland credits if Enbridge fails to meet its site restoration requirements.

37. One commenter flagged wetland impacts between mile markers 1058.8 and 1066.5. The commenter indicated that for this roughly 7.8 mile stretch the utility corridor passes through an intact functioning peatland identified by the DNR as a large landscape area of high and moderate biodiversity significance. The commenter indicated this area is also very culturally significant and contains several DNR identified wild rice waters. **DNR Response:** Enbridge has completed a number of cultural, environmental, and survey studies along the utility corridor. Enbridge is required under section 2.4.1 of the PCMP Plan to install peatland groundwater monitoring wells in this peatland area from crossing numbers 106 to 110. The portions of this area on state land will be subject to winter construction requirements and mitigation under the special provision for wetland/peatland construction in the license. This provision addresses construction in sensitive wetland/peatland areas, including the area described by the commenter. The Application includes site specific details for construction activities within these wetland/peatland complexes. Under the special provision, Enbridge must attempt to construct in these areas during winter to the maximum extent feasible, depending on construction start dates for the Project. In the event Enbridge cannot completely construct in the sensitive areas during winter, Enbridge must submit for DNR’s review and approval a revised peatland/wetland site construction plan that demonstrates how winter construction will be implemented to the maximum extent possible, including information to support why any specific winter construction

is not feasible. The plan must also provide construction details for peatland/wetland construction that will be implemented to minimize impacts to these resources. In addition Enbridge must minimize impacts by the following: (1) following site-specific construction plans for crossing numbers 32-35, 86-110, and 143-169; (2) implementing enhanced environmental construction monitoring to ensure that Enbridge properly utilizes best management practices, including enhanced monitoring requiring an additional independent environmental monitor at each construction spread where non-winter construction will occur and additional DNR staff monitoring of these sites, with Enbridge responsible for the costs of this additional DNR staff monitoring; and (3) the PCMP includes rigorous vegetation and shallow groundwater monitoring in these areas. If this monitoring identifies unanticipated impacts to these areas, Enbridge will be required to submit a corrective action plan for DNR review and approval. Enbridge will be required to implement the corrective action plan within one year. If the DNR determines the corrective action plan did not sufficiently remediate the impacts, the DNR can conduct an assessment of the impacted area to determine if additional compensatory mitigation is needed. This assessment could result in additional wetland mitigation by Enbridge or result in a monetary fine to Enbridge. Any money received from Enbridge as a result of this assessment will be used for administration, planning and implementation of wetland restoration activities on state land. Enbridge is also required under the special provision in the license and the PCMP Plan to provide financial assurance that DNR can access to perform the restoration work, restore other wetlands and waterbodies in the area, or purchase wetland credits if Enbridge fails to meet its site restoration requirements.

C. Enbridge Submits Revised Application to DNR for a License to Cross State Lands

38. On December 20, 2019, after receiving comments on its second version of the Application, Enbridge submitted a revised Application for License to Cross Public Lands for the Line 3 Replacement Project (“third version of the Application”).

39. The third version of the Application contained updated information from the second version of the Application. The third version of the Application included a completed DNR application for license to cross state lands; information about the applicant; Project background; a description of the Project components and associated construction activities and operation activities; description of Project activities on state lands; environmental inspection and monitoring; and compliance with environmental standards; along with supporting figures, maps, photographs and technical information.

40. Enbridge incorporated DNR resource review comments on the second version of the Application into the information in the third version of the Application. Examples of DNR’s comments that were addressed include: additional information about valve sites and moving the location of a valve site off state land, extending the cathodic protection (a form of corrosion

control on buried pipelines) area to overlap the permanent right of way, a vegetation management plan, use of low ground pressure equipment in wetlands and peatlands in order to avoid compaction, wildlife friendly erosion and sediment control, prohibition of wood chipping, and narrowing workspace footprint from 50 to 30 feet in HDD entry and exit points for multiple land crossings.

D. DNR Reviews and Provides Resource Review Comments on Application for a License to Cross State Lands

41. The DNR reviewed all versions of the Application and provided resource review comments to Enbridge during all phases of the Application process. The process included numerous meetings, discussions, and correspondence between DNR staff and Enbridge. Key resource review topics and resolutions are discussed below.

42. Terrestrial Invasive Species. DNR technical staff commented in early iterations of the Application that the project would need to take actions to minimize the risk of spread of terrestrial plant invasive and noxious species on state land crossings. **Resolution:** Enbridge conducted terrestrial invasive and noxious species plant surveys between 2015 and 2019 along a 50-foot-wide buffer on the construction workspace and 30-foot-wide-buffer on access roads and improved haul roads. Enbridge surveyed 100 percent of DNR state lands within the pipeline corridor. Enbridge identified and mapped the location of 46 terrestrial plant invasive and noxious species. In addition to the standard invasive species requirements in paragraph 5 of DNR’s license, Enbridge developed, in consultation with the DNR, and is subject to, an Invasive and Noxious Species Management Plan (“INSMP”) as appendix B of the EPP. Under the INSMP, Enbridge will be required to undertake actions to minimize the spread of documented occurrences of terrestrial plant invasive and noxious species on DNR administered lands that are listed as noxious by the USDA, listed as “Prohibited Noxious Weeds,” “Restricted Noxious Weeds,” or “Specially Regulated Plants” by the Minnesota Department of Agriculture, or are listed as invasive by DNR Operational Order 113. In response to DNR resource comments, Enbridge has included information in the INSMP regarding invasive and noxious species management for the term of license, in addition to pre-construction and construction phases.

43. Wetland/Peatland Impacts. DNR technical staff raised concerns in early iterations of the Application about the potential for hydrologic impacts after construction in large flowing peatland/wetland complexes on state land crossings. DNR staff commented that the Application did not sufficiently address why Enbridge cannot construct across wetlands in winter. Several peatland areas could be significantly impacted by non-frozen construction scheduling. DNR staff requested that Enbridge first avoid the area; if the area cannot be avoided, then minimize impacts by frozen construction; and if frozen construction cannot happen, then Enbridge should mitigate the impacts. **Resolution:** The Project route was established by the PUC’s RP. Avoiding peatland/wetland areas altogether is not feasible. As part of its USCOE

Clean Water Act section 404 permit and the PCMP Plan, Enbridge would be required to install groundwater monitoring wells in peatland/wetland complexes. Enbridge conducted surveys of these peatland/wetland complexes. Based on the survey results, DNR staff and other regulatory agencies identified the locations for the groundwater monitoring wells. Three segments of crossings on state land, crossing numbers 32-35, 86-110, and 143-169, are wetland/peatland complex areas subject to winter construction requirements and mitigation under the special provision in the license. The Application includes site specific details for construction activities within these wetland/peatland complexes. Under the special provision, Enbridge must attempt to construct in these areas during winter to the maximum extent feasible, depending on construction start dates for the Project. In the event Enbridge cannot completely construct in the sensitive areas during winter, Enbridge must submit for DNR's review and approval a revised peatland/wetland site construction plan that demonstrates how winter construction will be implemented to the maximum extent possible, including information to support why any specific winter construction is not feasible. The plan must also provide construction details for peatland/wetland construction that will be implemented to minimize impacts to these resources. In addition Enbridge must minimize impacts by the following: (1) following site-specific construction plans for crossing numbers 32-35, 86-110, and 143-169; (2) implementing enhanced environmental construction monitoring to ensure that Enbridge properly utilizes best management practices, including enhanced monitoring requiring an additional independent environmental monitor at each construction spread where non-winter construction will occur and additional DNR staff monitoring of these sites, with Enbridge responsible for the costs of this additional DNR staff monitoring; and (3) the PCMP includes rigorous vegetation and shallow groundwater monitoring in these areas. If this monitoring identifies unanticipated impacts to these areas, Enbridge will be required to submit a corrective action plan for DNR review and approval. Enbridge will be required to implement the corrective action plan within one year. If the DNR determines the corrective action plan did not sufficiently remediate the impacts, the DNR can conduct an assessment of the impacted area to determine if additional compensatory mitigation is needed. This assessment could result in additional wetland mitigation by Enbridge or result in a monetary fine to Enbridge. Any money received from Enbridge as a result of this assessment will be used for administration, planning and implementation of wetland restoration activities on state land. Enbridge is also required under the special provision in the license and the PCMP Plan to provide financial assurance that DNR can access to perform the restoration work, restore other wetlands and waterbodies in the area, or purchase wetland credits if Enbridge fails to meet its site restoration requirements.

44. Sites of Biodiversity Significance. As part of the NHIS review process, DNR staff recommended that Enbridge undertake additional measures to avoid or minimize impacts to Minnesota Biological Survey sites of Biodiversity Significance ranked Outstanding or High and DNR Native Plant Communities ranked S1 to S3. Recommendations included limiting the width

of construction workspace to 95 feet, limiting the placement of ATWS, using redundant erosion control, using wildlife-friendly erosion control, prohibiting the placement of burn piles, allowing topsoil to retain existing roots and minimizing topsoil disturbance, prohibiting field cultivators and chisel plows, prohibiting the use of hydromulch, restoring disturbed areas within three days, enhancing restoration for temporary workspaces, and using mats in upland and wetland areas to prevent the use of offsite fill or gravel. **Resolution:** The final approved NHIS Review and Avoidance Plan details requirements and methods Enbridge must undertake for avoidance and minimization of impacts to native plant communities. Enbridge coordinated with DNR to modify workspaces to avoid impacts to High or Outstanding Sites of Biodiversity Significance and native plant communities ranked as S1-S3. Examples include removing an additional temporary workspace at milepost 921.9 based on DNR's comments, reducing clearing impacts from 50 to 30 feet at milepost 991.1 to 991.3 and 993.1 to 993.4, moving additional temporary workspace off state land at milepost 991.4, and reducing additional temporary workspace at multiple locations. Enbridge is subject to additional measures to prevent the introduction or spread of invasive species within these ecologically sensitive areas in the Invasive and Noxious Species Management Plan, part of the EPP. Enbridge will be required to use redundant erosion controls per the requirements of the MPCA Construction Stormwater General Permit and section 401 Water Quality Certification. Under the EPP, which is incorporated into the license, Enbridge will be required to use wildlife-friendly erosion control, limit the areas where burning may occur, minimize the amount of soil disturbance to the topsoil after it is replaced over the subsoil, avoid the use of hydroseeding on state lands (other than steep slopes), and begin cleanup and rough grading as soon as practicable, but not later than the end of the following workday.

45. Seed Mixes. DNR staff commented on and were involved in helping to determine lists of the types of seed mixes that would be used in certain zones for restoring disturbed areas on the state land crossings. The types of seed mixes are important to help prevent erosion after the construction phase of the project. **Resolution:** As part of the license, Enbridge is required to provide a full and final planting plan under the PCVMP for state land crossings for DNR approval. The final planting plan will include seed mix selection criteria, a set of maps delineating a proposed seeding zone, State of Minnesota Seed Mixes and Summary Table, seed specifications, and seed installation specifications. The planting plan will apply to the license right-of-way, temporary workspaces, ATWSs, and access roads. Enbridge will be required to use specialized seed mixes approved by the Minnesota Board of Water and Soil Resources. Seed mix selection will take into consideration climate, season, geology, topography, soils, drainage, pre-construction vegetation, and adjacent plant communities.

46. Salamanders. DNR raised issues in early iterations of the Application about potential impacts to four-toed salamanders, a species of special concern, along the state land crossings. DNR provided recommendations to Enbridge to minimize impacts to the resource resulting from the project. DNR staff recommended that construction not occur from late April

through September in the four-toed salamander habitat area. **Resolution:** As a condition in the license, Enbridge is required under the NHIS Review and Avoidance Plan to minimize impacts to four-toed salamander habitat by implementing, monitoring, and maintaining temporary and permanent erosion control best management practices and by selecting herbicides and treatment methods for invasive species management appropriate for application near aquatic resources. Enbridge will not be allowed to apply fertilizer, lime, or mulch in wetlands. (Mulch can be applied in peatlands as described in section 7.7.3. of the EPP.) Enbridge has included the four-toed salamander habitat area in the portion of the project subject to the wetland/peatland adaptive management strategy winter construction plan.

47. Old Growth. DNR staff commented in early iterations of the Application about potential impacts to old-growth forests. Old-growth forests are natural forests that have developed over a long period of time, generally at least 120 years, without experiencing severe, stand-replacing disturbances such as fires, windstorms, or logging. Old-growth forests are a unique, nearly vanished piece of Minnesota's history and ecology. Less than four percent of Minnesota's old-growth forests remain. DNR staff required Enbridge consider project construction alterations to avoid impacts to old-growth forests in Savanna State Forest and Hill River State Forest. **Resolution:** Enbridge revised its NHIS Review and Avoidance Plan to address DNR's comments. Under the NHIS Review and Avoidance Plan, Enbridge will be required to stake construction exclusion areas where old-growth forest is located adjacent to construction workspace and access roads in order to minimize impacts to old-growth. Enbridge designed ATWS within old-growth to be the minimum size to allow for safe and effective construction of the Project as another measure to minimize impacts.

48. Little Otter Creek AMA. DNR staff commented throughout the resource review process about potential impacts to Little Otter Creek Aquatic Management Area. Staff requested Enbridge to develop a Site Specific Restoration Plan ("SSRP") for the crossing at Little Otter Creek Aquatic Management Area. This location involves crossings of state land and public waters. The crossing of the unnamed tributary at milepost 1115.6 is subject to a land crossing license because it is located on state land. The tributary is a major coldwater feeder tributary branch to Little Otter Creek, which provides a significant portion of spawning habitat for brook trout in the system. DNR staff requested a HDD crossing method at the site to minimize wetland impacts and disturbance. If a dam and pump crossing method would be used, then the stream must be surveyed and returned to the same channel dimensions and location. DNR staff also had specific revegetation requirements for the site. Staff requested a minimum of 50 feet of riparian tree and shrub planting to address cumulative impacts on shading and riparian buffer filtering and to provide nutrient input from leaf litter. **Resolution:** Enbridge and DNR visited the site and met on March 22, 2019 to discuss this crossing location. It was determined the HDD crossing method is not possible at this site due to the depth needed to install the pipe in the deep river valley and location of surrounding roadways and railroads. Enbridge will conduct a dry crossing

installation that will be required to be completed within 24 hours to minimize impacts. Enbridge has developed a SSRP for this crossing location, which has been approved by the DNR, and Enbridge will be required to comply with the SSRP as part of the license. The SSRP includes requirements for a 50-foot buffer of woody vegetation and timing restrictions from April 1 to June 30 to minimize potential impacts to trout.

49. Moose Lake Area. DNR staff commented that the Moose Lake area is one of the most sensitive sites of the proposed state land crossings. The Moose Lake site has state land on the east side and county tax forfeited land on the west side. Moose Lake is located within a peatland complex. It is part of a large riparian wetland/peatland complex that flows into a lake of outstanding biodiversity, and it is adjacent to a DNR Wildlife Management Area. DNR technical staff commented about impacts to the non-public waters part of the complex, flow through the wetland, and how the crossing could affect the hydrology and geomorphology of the public waters. This is a high priority area due to Moose Lake being a Minnesota Biological Survey site ranked Outstanding and the presence of wild rice in the lake and was identified by DNR as the highest priority area for winter time construction. DNR required additional data collection on peat depth and degree of decomposition to assist in understanding how to address pipeline construction in this area and other large wetland/peatland complexes. **Resolution:** These crossings are subject to the wetland/peatland winter construction and mitigation special provision. As indicated above, the Moose Lake area (commencing at state land crossing 86) is DNR's highest priority area for winter construction. Winter construction minimizes DNR's concerns with impacts to the site, including runoff, compaction, and impacts to vegetation, and allows for quicker restoration. The Moose Lake crossings are also subject to a SSRP. The SSRP is designed to ensure the site can be restored to its preexisting condition. This site is subject to enhanced post-construction monitoring under the PCMP and enhanced vegetation monitoring under the PCVMP. This area is subject to a Wetland/Peatland Construction Plan in attachment L to the Application. The Wetland/Peatland Construction Plan contains requirements for soil management and matting. This area is subject to piezometer monitoring. The pipeline crossing is located at the edge of the ordinary high water level of Moose Lake to minimize how much of the lake is directly impacted.

50. Depth of Cover. DNR technical staff commented about the proposed depth of cover of the utility. Staff requested that non-public waters on state land should have the same depth of cover and extent of cover as in the crossings licensed under the water crossing license. Staff commented that the pipeline should be placed four feet below the topsoil component of wetlands, not from the top of the standing water portion of wetlands. **Resolution:** Enbridge has agreed to a greater depth of cover in certain land crossing locations to further avoid and minimize hydrotechnical hazard impacts on the pipeline. The EPP was revised to clarify that depth of cover does not include standing water, floating mats, or unconsolidated organic material

at the top of wetlands. The minimum depth of cover of four feet at all surface water crossings exceeds the federal mandated depth for water bodies of this size.

51. The DNR provided resource review comments on the third version of the Application to Enbridge on May 20, 2020. This included comments on the PCVMP (previously referred to as the Vegetation Management Plan), Winter Construction Plan, and EPP.

52. On August 14, 2020, Enbridge responded to DNR's resource review comments on the third version of the Application. The DNR and Enbridge engaged in discussions over the next several weeks to resolve DNR's remaining resource review comments.

E. Enbridge Submits Final Application to DNR for a License to Cross State Lands

53. On November 8, 2020, Enbridge submitted a revised Application for License to Cross Public Lands for the Line 3 Replacement Project—the final version of the Application.

54. The majority of DNR's resource review comments on the Application have been incorporated by Enbridge directly into the final Application materials, including the plans attached to the Application. Because the Application is incorporated into and becomes part of the utility license upon issuance, many of DNR's resource review comments are not independently listed in the license document outside of the Application materials.

IV. ANALYSIS OF STATUTORY AND REGULATORY REQUIREMENTS

55. The policy underlying DNR's utility licensing system is to minimize the environmental impact which may result from utility crossings and to provide maximum protection and preservation of the natural environment. *See* Minn. Stat. § 84.415, subd. 1; Minn. R. 6135.0100 and .1000, subp. 1.

A. The Application is Complete and Contains All Required Information

56. Enbridge properly submitted the Application for a license to cross state lands because the Project would cross state lands administered by the DNR in Clearwater, Hubbard, Wadena, Cass, Aitkin, St. Louis, and Carlton Counties. *See* Minn. Stat. § 84.415, subd. 1.

57. All utility license applications must provide in the information identified in Minn. R. 6135.1000, subp. 2, and meet the requirements of Minn. Stat. § 84.415, subd. 3. The application must be in quadruplicate and include a legal description of the lands or waters affected, a metes and bounds description of the required right-of-way, a map showing said features, and a detailed design of any necessary structures. Minn. Stat. § 84.415, subd. 3. In lieu of these application requirements, the DNR may require a utility license application to be in another form and include other descriptions, maps or designs. Minn. Stat. § 84.415, subd. 3. For each environmental standard in Minnesota Rules chapter 6135, a utility license applicant must

indicate whether the application is satisfying the standard, where applicable, or if not, why not. Minn. R. 6135.1000, subp. 2. The application must also supply data on relevant site conditions where applicable. Minn. R. 6135.1000, subp. 2. Except when the DNR determines it is not feasible and prudent, or not in the best interests of the environment, the applicant is required to comply with the standards set forth in Minn. R. 6135.1000-.1500 in designing, constructing, and maintaining utility crossings. Minn. R. 6135.1000, subp. 2.

58. Enbridge submitted the Application electronically in a format providing for quadruplicate copies. The Application includes legal descriptions of the lands affected (attachment A); length, width, and acreage descriptions (attachment A); depictions of the required right-of-way (attachment B); maps showing the utility features (attachment B); and a detailed design of necessary structures and components (plans attached to the Application). To the extent any application information specified in Minn. Stat. § 84.415, subd. 3 was not included, the Application contains information in the form required by the DNR, as communicated to Enbridge by DNR during the course of review of the Application materials and the resource review process. *See* Minn. Stat. § 84.415, subd. 3. The Application, in section eight, also indicates whether Enbridge is satisfying the environmental standards under the administrative rules or, if not, why not, and the Application supplies data on relevant site conditions in various locations and in supplemental submittals to the DNR. *See* Minn. R. 6135.1000, subp. 2.

59. Enbridge has paid to the DNR the \$3,500 application fee, per Minn. Stat. § 84.415, subd. 6(a)(1) and Minn. R. 6135.0400, subp. 2.

60. Enbridge has paid a \$200,167.00 land crossing fee, per Minn. R. 6135.0400, subp. 3(B)(1) and .0820.

61. Enbridge has paid a \$121,915.28 timber damages fee, a \$221,491.00 aggregate resource encumbrance, and an \$88,500.00 peat resource encumbrance fee, per Minn. Stat. § 84.415, subd. 5(a).

62. Enbridge has paid a \$395,234.00 monitoring fee to cover the projected reasonable costs for DNR monitoring the construction of the utility line and preparing special terms and conditions of the license to ensure proper construction, per Minn. Stat. § 84.415, subd. 6(a)(2).

63. As outlined above, the Application is complete because all necessary and applicable information for evaluation has been provided by Enbridge or is otherwise available to the DNR. The information available to the DNR is adequate to determine whether the proposed utility can be constructed and operated in such a manner to have a minimum adverse impact on the environment. Minn. Stat. § 84.415, subd. 1; Minn. R. 6135.1000, subp. 1. Enbridge has also

submitted adequate information for DNR to determine that the crossing of state lands will not cause pollution, impairment, or destruction of the air, water, land or other natural resources. *See* Minn. Stat. § 116D.04, subd. 6.

B. Consideration of Standards in Minn. R. 6135.1000 through Minn. R. 6135.1500.

64. Minn. R. 6135.1000. Rule 6135.1000 provides “[i]t is essential to regulate utility crossings of public lands and waters in order to provide maximum protection and preservation of the natural environment and to minimize any adverse effects which may result from utility crossings.” Minn. R. 6135.1000, subp. 1. Based on DNR’s thorough review of the Application and Project, the license, including the license special provisions and Applications materials incorporated into the license, contains numerous stringent environmental requirements and protections pertaining to the state land crossings. Examples of these requirements and protections include the following. The wetland/peatland winter construction and mitigation special provision requires Enbridge to construct in sensitive areas along three state land segments during winter to the maximum extent feasible, contains enhanced construction monitoring requirements, and ensures that Enbridge will mitigate impacts to these areas. The NHIS Review and Avoidance Plan contains specific measures Enbridge must follow to avoid or minimize impacts to rare and sensitive ecological resources. Enbridge is subject to a limit on the amount of open trench per spread during winter conditions, per a special provision in the license and MPCA regulations. Under the EPP, Enbridge will be required to use wildlife-friendly erosion control, limit the areas where burning may occur, minimize the amount of soil disturbance to the topsoil after it is replaced over the subsoil, avoid the use of hydroseeding on state lands (other than steep slopes), and begin cleanup and rough grading as soon as practicable, but not later than the end of the following workday. Enbridge is required to stabilize and revegetate disturbed areas with seed mixes that have been approved by the DNR. Crossings for the Willard Munger Trail, Paul Bunyan Trail, and Little Otter Creek AMA are subject to special woody vegetation planting requirements. SSRPs provide a tailored restoration plan based on local conditions and survey data. Enbridge has developed SSRPs largely in connection with the license to cross public waters, but there are also three land crossings under this license (crossing numbers 4, 75, and 179) that are subject to a SSRP. Enbridge will be required to conduct post-construction monitoring in upland areas during the first growing season after construction restoration work is complete and in years 1, 3, and 5, per the PCVMP. Post-construction monitoring will continue until any corrective actions have been completed and DNR has determined that Enbridge has met restoration standards. DNR agency staff will perform spot check inspections to confirm compliance with DNR license conditions. The requirements and protections summarized above provide maximum environmental protection and preservation and minimize any adverse effects from construction, operation, and maintenance of the project across state land crossings.

65. Minn. R. 6135.1100 through Minn. R. 6135.1500 detail design, construction, and maintenance standards for utility crossings. An applicant for a utility crossing license is required to comply with these standards, except when the DNR determines that it is not feasible and prudent, or not in the best interests of the environment. *See* Minn. R. 6135.1000, subp. 2. The DNR's consideration of each of the applicable standards is set forth in greater detail below.

66. Minn. R. 6135.1100 sets forth standards for route design for a DNR utility crossing license. The Project is subject to the jurisdiction of the PUC and was required to obtain a routing permit issued by the PUC under Minnesota law applicable to certain pipelines. *See* Minn. Stat. §§ 216B.2421, subd. 2(4) and 216G.02. The PUC has re-issued the RP establishing the route for the Project. *See 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/PPL-15-137, Reissuance Notice (May 1, 2020). Because the Project requires a route permit from the PUC under Minnesota law and that process entails a thorough route review process, the DNR deems the Project route to be established by the RP for purposes of the license. The DNR has therefore applied the route design standards under rule 6135.1100 within the scope of the route established by the RP.

67. Minn. R. 6135.1100, subp. 1(A), requires utility crossings to avoid steep slopes. Due to the nature of the Project and the RP, the DNR determines that it is not feasible and prudent for the project to avoid all steep slopes along the RP on state land crossings. In accordance with the Application and license terms, Enbridge will be required to mitigate the impact of this item by undertaking temporary erosion and sediment control best management practices at the base of sloped approaches to waters and public roads and in other areas determined by the independent environmental monitor (an independent contractor that observes construction activities, provides an ongoing field presence during construction, and reports observations to DNR whether Enbridge is complying with license terms), including across the entire construction workspace and at temporary access roads at the base of slopes greater than three percent. Pursuant to the EPP, the temporary erosion and sediment control BMPs will be maintained until permanent cover is established. Enbridge will also be required to install temporary slope breakers in steep slope areas to minimize concentrated or sheet flow runoff in disturbed areas. Enbridge will be required to install trench breakers and will select locations for installations based on field conditions, including the degree and length of slope, presence of downslope sensitive resource areas such as wetlands and waterbodies, and proximity to other features such as roads or railroads. Enbridge will be required to stabilize steep slopes in areas other than cropland with erosion and sediment control best management practices. Pursuant to the EPP and SSRPs, Enbridge will be required to restore and stabilize steep slopes, including through the use of approved seed mixes.

68. Minn. R. 6135.1100, subp. 1(B), requires utility crossings to avoid scenic intrusions into stream valleys and open exposures of water. Due to the nature of the Project and the RP, the DNR determines that Enbridge has minimized scenic intrusions into stream valleys and open exposures of water to the maximum extent possible by co-locating the pipeline within existing pipeline, utility, or transportation corridors. For the public land crossings, 159 of 178 crossings are co-located with existing pipeline, utility, or transportation corridors. Complete avoidance of scenic intrusions into stream valleys and open exposures of water on state lands is not feasible and prudent. Enbridge will be required to minimize the impact from this item by restoring all slopes of banks at public water crossings on state land to pre-construction conditions. If the slope is unstable, Enbridge will be required to reshape the disturbed areas to transition into the natural stream bank and create a blended, natural appearance.

69. Minn. R. 6135.1100, subp. 1(C), requires utility crossings to avoid scenic intrusions by avoiding ridge crests and high points. Due to the nature of the Project and the RP, the DNR determines that Enbridge has minimized scenic intrusions by avoiding ridge crests and high points to the maximum extent possible by co-locating the pipeline with other pipeline, utility, or transportation corridors. For the public land crossings, 159 of 178 crossings are co-located with existing pipeline, utility, or transportation corridors. The impacts from this item are also lessened by the permanent operational right-of-way being 50 feet, which is the width established by the RP, and is the minimum cleared corridor width that allows for aerial inspection of the pipeline to comply with pipeline safety requirements. Complete avoidance of scenic intrusions by avoiding ridge crests and high points is not feasible and prudent.

70. Minn. R. 6135.1100, subp. 1(D), requires utility crossings to avoid creating tunnel vistas by, for example, building deflections into the route or using acceptable screening techniques. The DNR determines it is not feasible to have deflections in the route, due to the nature of the Project and route set by the RP. The PUC, not the DNR, has the authority to issue the pipeline routing permit. Following construction, Enbridge will be required to restore vegetation within the cleared right-of-way according to the Application and terms of the license, which will minimize tunnel vistas. Pipeline safety is regulated by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration under Title 49 Code of Federal Regulations. To comply with inspection requirements under these federal regulations and maintain integrity of the pipeline, Enbridge will maintain a 50-foot operational right-of-way. At the riparian area of trenched waterbody crossings, the right-of-way will be a 10-foot wide corridor centered on the pipeline free of woody shrubs and a 30-foot wide corridor free of trees. The Application complies with this standard to the extent it is feasible and prudent.

71. Minn. R. 6135.1100, subp. 2(A), requires utility crossings to, with regard to vegetation, avoid wetlands. The DNR determines it is not feasible and prudent for the Application to meet this standard, due to the nature of the Project and route set by the RP.

Because the PUC, not the DNR, has the authority to issue the pipeline routing permit, any alternative involving a different route is not a feasible alternative. The designated route under the RP crosses numerous wetlands. Enbridge will be required under the Application and license to minimize the impact to wetlands by limiting construction workspaces across wetlands to a width of 95 feet, flagging wetland boundaries and boundaries of construction workspace by survey crews so wetlands can be easily identified and managed according to the Application requirements, cutting off vegetation and trees within wetlands at ground level to leave existing root systems intact, and locating ATWS outside wetlands where possible. Enbridge will minimize wetland impacts through the use of best management practices described in the EPP, including implementing temporary erosion/sediment control practices and conducting post-construction monitoring pursuant to the PCMP Plan. To minimize impact while accessing the construction workspace across wetlands, Enbridge will install construction mats in accordance with the EPP. Enbridge will be required to locate staging areas, additional spoil storage areas, and ATWS in upland areas at least 50 feet from wetland boundaries where safe work practices or site conditions permit. If a 50-foot setback is not permitted by site conditions, Enbridge will be required to locate the areas as far from the wetland as practicable. Chips, mulch, or mechanically cut woody debris from clearing may not be stockpiled in wetlands pursuant to the EPP. Enbridge will not be authorized to conduct any construction activities, including vegetation clearing, between the ATWSs and the wetlands.

72. Minn. R. 6135.1100, subp. 2(B), requires utility crossings to, with regard to vegetation, run along the fringe of forests rather than through them, but if it is necessary to route through forests, then utilize open areas in order to minimize destruction of commercial forest resources. Though the route designated by the RP runs through forests in some areas, approximately 91 percent of the route is co-located within an existing pipeline, utility, or transportation corridor, which utilizes open areas and minimizes forest fragmentation. Following construction in forests, construction workspaces will be restored to pre-construction contours, and the workspace will be revegetated pursuant to the requirements of the EPP. Enbridge will be required to reestablish woody vegetation outside of the operational right-of-way, and merchantable timber must be managed according to the PCVMP. Mulch and mechanically cut woody debris will be uniformly broadcast to less than 2-inch thickness and in a manner that maintains visible ground. An environmental inspector will accompany the clearing crews to monitor the clearing activities. The DNR determines the Application complies with this standard.

73. Minn. R. 6135.1100, subp. 3, requires utility crossings to avoid soils whose high susceptibility to erosion would create sedimentation and pollution problems during and after construction, avoid areas of plastic soils which would be subject to extensive slippage, and avoid areas with high water tables, especially if construction requires excavation. Due to the nature of the Project and the RP, the DNR determines it is not feasible and prudent for the Application to

strictly comply with this standard. Because the PUC, not the DNR, has the authority to issue the pipeline routing permit, any alternative involving a different route is not a feasible alternative. The route designated by the RP crosses some areas of soils with high susceptibility to erosion, some areas of plastic soils, and some areas of high water tables. Pursuant to the EPP, Enbridge will be required to minimize the impact of this item by suspending construction activities in wet weather conditions to prevent soil rutting and compaction, implementing temporary and permanent erosion and sediment control best management practices, segregating topsoil, and implementing spill prevention, containment and control measures to avoid soil contamination. Impacts are also minimized by construction dewatering requirements under the Water Appropriation Permit No. 2018-3420, the Stormwater Pollution Prevention Plan under the MPCA Construction Stormwater General Permit, and use of trench breakers as described in section 1.13 of the EPP. Enbridge is required under a special provision in the license to immediately notify the DNR if the pipeline comes out of compliance with the original Application specifications (for example, the pipe becomes exposed). Enbridge must submit a plan for corrective action within six months to the DNR for review and approval. Enbridge is required to implement the corrective action plan within one year. This requirement addresses potential pipeline exposure issues within high water tables.

74. Minn. R. 6135.1100, subp. 4 pertains to crossing of public waters and is not applicable to the Application.

75. Minn. R. 6135.1100, subp. 5, requires utility crossings to avoid special use areas (defined as scientific and natural areas, units of the Minnesota Wild and Scenic River System, and those areas subject to special regulation for recreational, scenic, natural, scientific, or environmental purposes), but if there is no feasible alternative route, then utilities are required to be placed underground and such crossings must be located with existing public facilities such as roads and utilities. The PUC, not the DNR, has the authority to issue the pipeline routing permit. The Project route is set by the RP. The Project does not cross any scientific and natural areas or units of the Minnesota Wild and Scenic River System. The pipeline is located underground and is generally co-located with existing facilities. For the public land crossings, 159 of 178 crossings are co-located with existing pipeline, utility, or transportation corridors. The Application complies with this standard.

76. Minn. R. 6135.1200, subp. 1(A), indicates applicants for a utility license must give primary consideration to underground placement in order to minimize visual impact. If the proposal is for overhead placement, the applicant shall explain the economic, technological, or land characteristic factors which make underground placement infeasible. The Project is an underground pipeline utility proposing underground crossings of state land. Certain limited components of the Project, including two valve sites and a cathodic protection bed facility located on State land, would be located aboveground. Underground placement of these

components is not feasible and prudent, as they require aboveground components for operation and routine servicing. These aboveground components are necessary to protect the environment and public safety in operation of the utility. The Application complies with this rule.

77. Minn. R. 6135.1200, subp. 1(B), indicates if overhead placement of the utility is necessary, the crossing must be hidden from view as much as practicable. The pipeline will be located underground. Certain limited components of the Project, two valve sites and a cathodic protection bed facility, would be located aboveground. Enbridge will be required to install a locked fence around these aboveground components. Under a special provision in the license, the fencing must be designed to shield visibility of equipment from view and blend with the surrounding natural environment. The Application complies with this rule to the extent it is feasible and prudent.

78. Minn. R. 6135.1200, subp. 2, requires utility crossings to be made as compatible as practicable with the natural area with regard to height, width, materials used, and color. The Project is an underground pipeline utility. Certain limited components of the Project, two valve sites and a cathodic protection bed facility, will be located aboveground. Underground placement of these components is impractical, as they require aboveground components for operation and routine servicing. These aboveground components are necessary to protect the environment and public safety in operation of the utility. Enbridge will be required to install a locked fence around these aboveground components. Under a special provision in the license, the fencing must be designed to shield visibility of equipment from view and blend with the surrounding natural environment. These features will be located near existing cleared high-voltage transmission line corridors or roadways, so the appearance of the surrounding area will not be adversely impacted. The Application complies with this rule.

79. Minn. R. 6135.1200, subp. 3, requires the right-of-way width to be kept to a minimum. The PUC, not the DNR, has the authority to issue the pipeline routing permit. Section 3.1 of the RP establishes the pipeline's 50-foot permanent right-of-way width. *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/PPL-15-137, Reissuance Notice (May 1, 2020). The Application complies with this rule.

80. Minn. R. 6135.1300 requires utility crossings to leave a screen of vegetation between the structures and road when crossing roads. Utility license applicants are required to construct across wetlands in the winter in order to minimize damage to vegetation and in order to prevent erosion and sedimentation. Applicants are also required to construct at times when local fish and wildlife are not spawning or nesting. The DNR determines it is not feasible or prudent to strictly comply with this rule. Enbridge will be required to minimize the impact from this item

by attempting to construct in wetland/peatland complexes during winter to the maximum extent feasible, depending on construction start dates for the Project. Enbridge must minimize impacts by submitting for DNR review and approval construction plans for each site that must include site construction plans and restoration efforts, must perform additional construction monitoring (including one additional dedicated independent environmental monitor), and must have a post construction monitoring plan. Enbridge is also required by the license to provide financial assurance that DNR can access to perform the restoration work, restore other wetlands and waterbodies in the area, or purchase wetland credits if Enbridge fails to meet site restoration requirements.

81. Minn. R. 6135.1400 requires applicants for a pipeline utility crossing to adhere to federal and state safety regulations regarding prevention (such as safety valves and circuit breakers) and emergency procedures in the event of failure (fire suppression, oil spill cleanup). Under Title 49 of the Code of Federal Regulations, Enbridge is subject to reporting, design, construction, pressure testing, operation, maintenance, integrity management, corrosion, and qualifications of pipeline personnel requirements. Enbridge is also required to identify high consequence areas prior to construction and must develop and submit a written Integrity Management Plan within one year of the start of construction. As required by Minnesota Statutes section 115E.04, MPCA reviews the Project's oil and hazardous substance discharge prevention and response plan. Enbridge will install 37 mainline valves with permanent road access to each valve along the Project in Minnesota. Two of these valves would be located on state lands as part of the license. Enbridge will be required to protect the entire pipeline with a cathodic protection system. The license requires Enbridge to comply with all applicable federal, state and local laws and regulations. The Application complies with this rule.

82. Minn. R. 6135.1500 requires applicants for a pipeline utility crossing to allow natural vegetation of value to fish or wildlife to grow in the right-of-way as long as it does not pose a hazard to or restrict reasonable use of the utility. Where vegetation has been removed, new vegetation consisting of native grasses, herbs, shrubs, and trees, recommended by the DNR, shall be planted and maintained on the right-of-way. Chemical control of vegetation must be in accordance with rules, regulations, and other requirements of all state and federal agencies with authority over the use. Enbridge will be required to conduct maintenance operations according to the EPP and PCVMP, which have been reviewed, revised by Enbridge based on discussions with DNR, and approved by the DNR. To comply with inspection requirements under federal regulations, Enbridge will maintain a 10-foot wide corridor centered on the pipeline free of woody shrubs and a 30-foot wide corridor free of trees within the riparian area of trenched waterbody crossings. Enbridge will be required to use specific seed mixes recommended by the DNR to revegetate the right-of-way. Enbridge will be allowed to use chemical control of invasive or noxious weeds only if approved by the DNR. The Application complies with the rule to the extent it is feasible and prudent.

83. As outlined in paragraphs 64-82, the DNR has considered the Application under Minn. R. 6135.1000-.1500 as well as Minn. Stat. § 84.415. The Application satisfies the applicable regulatory requirements thereunder.

C. Additional Terms and Conditions Pursuant to Minn. R. 6135.1700.

84. Minn. R. 6135.1700 provides that the DNR may, in granting a utility license, include any terms, conditions, or reservations which may be necessary to minimize the adverse effect on the environment or to carry out the policies of chapter 6135. *See* Minn. R. 6135.1700. Due to the nature, location, and scope of the Project, the proposed license contains numerous special terms and conditions. Three of the more significant conditions that are being implemented to minimize adverse effects on the environment are the wetland/peatland winter construction and mitigation requirements, special requirements for Little Otter Creek AMA, and rutting and construction mats.

85. Wetland/Peatland Construction Requirements. Three segments of crossings on state land, crossing numbers 32-35, 86-110, and 143-169, contain sensitive wetland/peatland complexes. Per a special provision in the license, the DNR is requiring Enbridge to construct in these sensitive wetland/peatland complexes with winter construction and mitigation requirements. Under this provision, Enbridge must attempt to construct in these areas during winter to the maximum extent feasible, depending on construction start dates for the Project. In the event Enbridge cannot completely construct in the sensitive areas during winter, Enbridge must submit for DNR's review and approval a revised peatland/wetland site construction plan that demonstrates how winter construction will be implemented to the maximum extent possible, including information to support why any specific winter construction is not feasible. The plan must also provide construction details for peatland/wetland construction that will be implemented to minimize impacts to these resources. In addition Enbridge must minimize impacts by the following: (1) following site-specific construction plans for crossing numbers 32-35, 86-110, and 143-169; (2) implementing enhanced environmental construction monitoring to ensure that Enbridge properly utilizes best management practices, including enhanced monitoring requiring an additional independent environmental monitor at each construction spread where non-winter construction will occur and additional DNR staff monitoring of these sites, with Enbridge responsible for the costs of this additional DNR staff monitoring; and (3) the PCMP includes rigorous vegetation and shallow groundwater monitoring in these areas. If this monitoring identifies unanticipated impacts to these areas, Enbridge will be required to submit a corrective action plan for DNR review and approval. Enbridge will be required to implement the corrective action plan within one year. If the DNR determines the corrective action plan did not sufficiently remediate the impacts, the DNR can conduct an assessment of the impacted area to determine if additional compensatory mitigation is needed. This assessment could result in additional wetland mitigation by Enbridge or result in a monetary fine to Enbridge. Any money

received from Enbridge as a result of this assessment will be used for administration, planning and implementation of wetland restoration activities on state land. Enbridge is also required under the special provision in the license and the PCMP Plan to provide financial assurance that DNR can access to perform the restoration work, restore other wetlands and waterbodies in the area, or purchase wetland credits if Enbridge fails to meet its site restoration requirements on wetlands and waterbodies.

86. Little Otter Creek AMA. Enbridge is subject to special depth of pipeline cover and revegetation requirements in this location under special provisions in the license and the Application materials. Enbridge is required to install the pipeline at a minimum depth of four feet below the ground surface for two public water crossings in this location licensed under the DNR's license to cross public waters (water license crossing numbers 63a and 63b). In relation to that requirement, under a special provision in the license, Enbridge is required at crossing 179 to install the pipeline to a depth of 4.3 feet below the bottom of the stream bed for the entire span between wetland boundaries surrounding the stream. This area is also subject to special restoration requirements requiring woody revegetation plantings under the planting plan in the EPP. This requirement is incorporated into the Little Otter Creek Aquatic Management Area Site-Specific Crossing and Restoration Plan, which is attachment I to the Application. Enbridge is required by the license special provision to complete an as-built ground survey after final restoration, which must be provided to the DNR within three months of completed restoration. Enbridge will conduct a dry crossing installation that will be required to be completed within 24 hours to minimize impacts. The SSRP for this crossing location includes requirements for a 50-foot buffer of woody vegetation and trout timing restrictions from April 1 to June 30.

87. Rutting and Construction Mats. The license contains a special provision requiring Enbridge to minimize rutting during construction of the pipeline to protect productivity, hydrologic function, and water quality; reduce erosion; and minimize impacts to flora and fauna. Enbridge is required to avoid repeated or excessive rutting. The special provision contains specific rutting thresholds and requirements for uplands and wetlands. In uplands, Enbridge is not allowed to exceed rutting of six inches deep or more for 10 percent of the total length of all roads, access paths, and skid trails. Enbridge is not allowed to have rutting exceed 50 feet of any 200 foot section. In wetlands, Enbridge cannot allow rutting of six inches deep or more to exceed a contiguous length of 300 feet or more than 50% of the width of the wetland in the vicinity of the rutting, whichever is less. Enbridge is also required in wetlands to minimize rutting and soil compaction by using supplemental equipment supports, low ground pressure equipment, or by conducting activities during frozen ground conditions. Enbridge is required to use mats as needed. Mats must be cleaned before being brought onto state land. Enbridge must clean mats during activities to avoid the spread of invasive species and so that soils do not accumulate. Enbridge cannot use gravel or other fill material to establish a base for mats.

D. The Proposed License for Utility to Cross State Land Satisfies the Prohibition on State Actions Affecting the Environment

88. The Minnesota Environmental Policy Act (“MEPA”) prohibits State actions that cause pollution, impairment or destruction:

“No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of 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.” *See* Minn. Stat. § 116D.04, subd. 6.

89. “Pollution, impairment or destruction” is defined by Minnesota law as “conduct ... which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur or any conduct which materially adversely affects or is likely to materially adversely affect the environment.” *See* Minn. Stat. § 116B.02, subd. 5.

90. In reviewing the administrative record, including the FEIS, and the Application, DNR considered the quality and severity of any adverse effects of the proposed crossing of state lands, including any potential long-term adverse effects, whether the public lands are unique or rare, the potential significant consequential effects of the proposed utility on other natural resources, and the direct and consequential impacts of the proposed utility on the environment.

91. As detailed herein, the proposed utility, subject to the conditions of the License to Cross State Lands, will comply with all applicable state environmental protection standards, including the requirements of Minnesota Statutes section 84.415 and Minnesota Rules chapter 6135 governing utility licenses.

92. The potential effects on natural resources resulting from the project and project alternatives were comprehensively analyzed within the Application.

93. The project will be also subject to other state and federal requirements and must comply with all applicable environmental protection standards. Wetland mitigation for unavoidable wetland impacts will be required under a federal wetlands permit issued by the USCOE. Wetland monitoring will be required under these federal wetland requirements.

94. Compliance with these regulatory requirements serves to ensure that the proposed utility under the license to cross state lands will not result in pollution, impairment, or destruction of natural resources. The crossing of state lands by the utility will not cause pollution, impairment, or destruction because the project complies with utility license regulations, the license to cross state lands will contain numerous special terms and conditions to address site specific issues, and Enbridge has incorporated feedback during the regulatory review process to further minimize the impact on the state lands.

95. As outlined above, the DNR has considered the proposed utility crossing under the license in accordance with MEPA, and determines that the proposed utility crossing satisfies the applicable statutory requirements.

Based upon the above Findings of Fact, the DNR makes the following:

CONCLUSIONS

1. It is the regulatory policy of the State to “insure that all projects for which [utility] licenses are sold will have a minimum adverse impact on the environment.” Minn. Stat. § 84.415, subd. 1. The Legislature delegated to the DNR the authority to adopt rules “containing standards and criteria governing the sale of licenses permitting the passage of utilities over public lands and waters.” Minn. Stat. § 84.415, subd. 1.
2. The DNR has authority to grant licenses permitting passage of mains or pipe lines for gas, liquids, or solids in suspension over, under, or across any part of any school, university, internal improvement, swamp, tax-forfeited or other land under the control of the DNR pursuant to Minn. Stat. § 84.415, subd. 1.
3. Enbridge’s proposed construction of the Project across state lands requires a license to cross state lands. *See* Minn. Stat. § 84.415, subd. 1; Minn. R. 6135.1000.
4. The DNR has the authority to impose conditions on any utility crossing license it issues. *See* Minn. Stat. § 84.415, subd. 1; Minn. R. 6135.1700.
5. The Application is complete and Enbridge has provided all information required for review under applicable statutes and rules. *See* Minn. Stat. § 84.415, subd. 3; Minn. R. 6135.1000, subp. 2.
6. As detailed in the factual findings above, the DNR has reviewed and analyzed the information before the agency in connection with its consideration of the Application.

7. Any application information required under Minn. Stat. § 84.415, subd. 3 not discussed herein were accepted by the DNR in another form. *See* Minn. Stat. § 84.415, subd. 3.
8. The Application for License for Utility to Cross State Lands No. ULND010332 satisfies the requirements set forth in Minn. Stat. § 84.415 and Minn. R. 6135.0100-.1800.
9. The Project is capable of being constructed and operated across state land pursuant to the license and conditions set forth in the issued license.
10. Pursuant to Minn. R. 6135.1000, subp. 2, Enbridge has complied with the standards in Minn. R. 6135.1100-.1500 in design, construction, and maintenance of the utility crossing, except when the DNR determined that it was not feasible and prudent, or not in the best interests of the environment.
11. Pursuant to Minn. R. 6135.1700, the DNR has included, and Enbridge is subject to, additional terms and conditions in the license necessary to minimize any adverse effects on the environment.
12. Pursuant to Minn. Stat. § 84.415, subd. 1 and Minn. R. 6135.1800, the DNR may upon 90-day written notice cancel the license for substantial violation of its terms, or if at any time its continuance will conflict with a public use of the land or water over or upon which it is granted, or for any other cause.
13. Pursuant to Minn. Stat. § 84.415, subd. 3, the DNR may at any time order such changes or modifications respecting construction or maintenance of structures or other conditions of the license as the DNR deems necessary to protect the public health and safety.
14. Any Findings of Fact that might properly be termed Conclusions of Law, and any Conclusions of Law that might properly be termed Findings of Fact, are hereby adopted as such.

Based on the foregoing Findings of Fact and Conclusions, the DNR enters the following:

ORDER

1. Based upon all the files, records, and proceedings in this matter and upon the DNR's Findings of Fact and Conclusions, License for Utility to Cross State Lands No. ULND010332 is hereby issued to Enbridge for construction, operation, and maintenance of the Project across the state lands described in the license, subject to the conditions set forth in the license.

DNR Authorized Signature


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Approved and adopted this 12th day of November, 2020
Deputy Commissioner Barb Naramore
STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES