

# **ENBRIDGE LINE 3 REPLACEMENT PROJECT**

## **Water Appropriation Permit No. 2018 – 3421**

### **(Dust Suppression)**

#### **FINDINGS OF FACT, CONCLUSIONS AND ORDER**

Water Appropriation Permit No. 2018-3421

Enbridge Line 3 Replacement Project

November 12<sup>th</sup>, 2020

# MINNESOTA DEPARTMENT OF NATURAL RESOURCES

**In the Matter of the Application for  
Water Appropriation Permit No. 2018-3421**

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

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After review of the application, due investigation of relevant information, and consideration of comments, and based on the information and statements contained in the permit applications submitted by Enbridge Energy, Limited Partnership (“Enbridge”), the applicant’s description of work proposed to be undertaken, and supplemental information in the administrative record contained within the MNDNR Permitting and Reporting System (“MPARS”) 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 Minn. Stat. § 103G.271, Enbridge applied for four separate water appropriation permits as part of its proposed Line 3 Replacement Pipeline Project (“Project”). The applications seek to appropriate water for (1) hydrostatic testing and horizontal directional drilling, (2) trench and construction dewatering, (3) dust suppression and (4) trench and construction dewatering near the Gully 30 calcareous fen. These Findings of Fact only address Enbridge’s water appropriation permit application for dust suppression. The other three water appropriation 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 approximately 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.

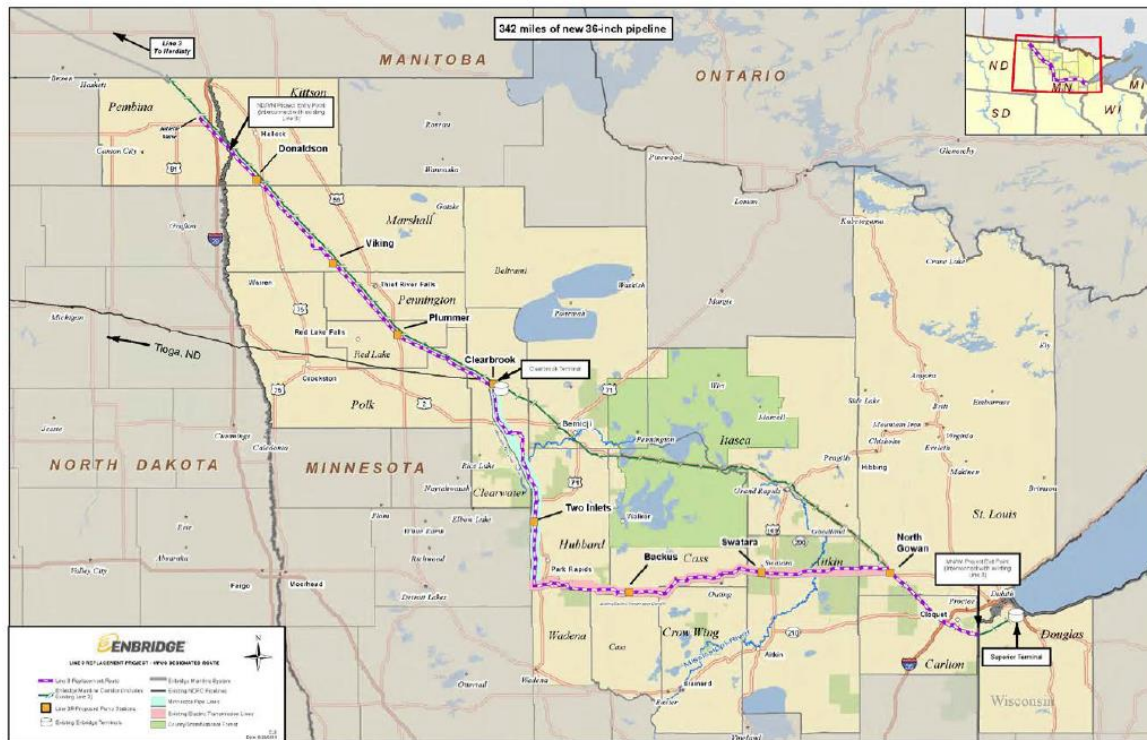
3. The Project has undergone significant review from the Public Utilities Commission (“PUC”). On April 24, 2015, Enbridge filed separate applications for a certificate of need (“CN”) and routing permit (“RP”) for the Project. The PUC authorized the Department of Commerce, Energy Environmental Review and Analysis Unit (“EERA”) to prepare an environmental impact statement (“EIS”). PUC referred the CN, RP, and EIS adequacy to the Office of Administrative Hearings for contested-case proceedings. Following the contested-case proceedings, and following a revised Final EIS (“FEIS”) submitted by EERA, the PUC eventually found the revised FEIS to be adequate, and granted the CN and RP contingent upon 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 forums, PUC issued an order finding the second revised FEIS adequate and granting the CN and RP subject to certain modifications and conditions.

4. The permit Enbridge seeks in this proceeding relates solely to the appropriation of water for dust suppression during construction along the pipeline corridor. A multitude of other permits and regulatory requirements will also apply to the Project prior to construction. Required authorizations from DNR include the three other water appropriation permits referenced above, two separate work in public waters permits, a threatened and endangered species takings permit, a utility license to cross public waters, a utility license to cross public lands, and an authorization under a calcareous fen management plan. The Project would also cross wetlands and streams not covered by DNR licenses or permits. These wetland and stream crossings are regulated by the Army Corps 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**

5. As shown below, the proposed Project transects thirteen Minnesota counties (Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Crow

Wing, Aikin, St. Louis, and Carlton counties).



6. 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.

7. The Project proposes 72 public water crossings, including five basins, 61 watercourses, and six wetlands. Five of the public watercourses are trout streams. With the exception of the six public water crossings in public waters wetlands located within private lands, all public waters crossings would be regulated by a Utility License to Cross Public Waters. One 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 (“APM”) permit is also not needed for this wetland crossing per Minn. R. 6280.0250, subp. 1(D). The five public water wetland crossings located on private lands are addressed in work in public waters permit application 2018-3419.

8. 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.

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

### **III. APPLICATION AND COMMENT PROCESS**

#### **A. Enbridge Submits Application to DNR to Appropriate Water from Surface Water Sources for Dust Suppression.**

10. Enbridge proposes to use surface water for dust suppression along the pipeline corridor. Because the proposed appropriation is in excess of one million gallons per year, a DNR water appropriation permit is required. *See* Minn. Stat. § 103G.271, subd. 4.

11. On September 13, 2018, Enbridge submitted an Individual Water Appropriation Permit Application-Dust Suppression to the DNR. Enbridge submitted a \$150 check covering the permitting fee in conjunction with the application and in accordance with the administrative rule. The application was assigned permit application no. 2018-3421.

12. The application includes a description of the Project; a statement of the overall purpose and need; a specific appropriation request for dust suppression with supporting figures including maps and the location of proposed water appropriation sites, a fugitive dust suppression plan and winter construction plan. An updated winter construction plan and the Environmental Protection Plan (EPP) were both updated and received on November 8, 2020.

13. DNR Water Appropriation Permit Application No. 2018-3421 proposes to use pumps to appropriate water from 35 different watercourses or basins (installation sites) along the pipeline corridor for dust suppression. Appropriation pumping rates will vary between 300 gallons per minute up to 1,000 gallons per minute. Water volumes at each appropriation site will vary. Listed below are the 35 installation sites (installations numbered 5, 20, 23, 25, 27, 29, 30, 32, 36, 43, 44, and 45 have been removed since the submittal of the initial application due to logistics with access, the presence of waters infested by invasive species or because the DNR requested removal; these installations below are the final numbers and locations), with the respective surface water name and the proposed contingency site included in permit application no. 2018-3421:

- Installation #1: Unnamed Stream (T160N/R50W/S23), Kittson County (alternate: none) –80,000 gallons
- Installation #2: County Ditch 7 (T159N/R49W/S22), Kittson County (alternate: installation #3) – 80,000 gallons

- Installation #3: Judicial Ditch 10 (T159N/R49W/S25), Kittson County (alternate: none) – 80,000 gallons
- Installation #4: Judicial Ditch 3 (T158N/R48W/S6), Marshall County (alternate: installation #3) – 80,000 gallons
- Installation #6: Tamarac River Site #1 (T157N/R47W/S20), Marshall County (alternate: Tamarac River #2 at milepost 829.3) – 320,000 gallons
- Installation #7: Unnamed Stream (T157N/R47W/S26), Marshall County (alternate: installation #6) – 80,000 gallons
- Installation #8: Middle River (T156N/R46W/S7), Marshall County (alternate: none) – 200,000 gallons
- Installation #9: Snake River (T155N/R46W/S12), Marshall County (alternate: none) – 200,000 gallons
- Installation #10: South Branch Snake River (T155/R45W/S29), Marshall County (alternate: installation #9) – 200,000 gallons
- Installation #11: Red Lake River (T153N/R43W/S29), Pennington County (alternate: none) – 320,000 gallons
- Installation #12: Clearwater River at Plummer (T151N/R42W/S4), Red Lake County (alternate: none) – 400,000 gallons
- Installation #13: State Ditch 61 (T150N/R40W/S16), Polk County (alternate: Lost River #1 at milepost 885.8) – 80,000 gallons
- Installation #14: Unnamed Ditch (T150N/R40W/S14), Polk County (alternate: Lost River #1 at milepost 885.8) – 80,000 gallons
- Installation #15: Lost River Site #2, (T149N/R38W/S15), Clearwater County (alternate: Pine Lake at milepost 904.7) – 400,000 gallons
- Installation #16: Silver Creek, (T149N/R38W/S25), Clearwater County (alternate: Pine Lake at milepost 904.7) – 200,000 gallons
- Installation #17: Clearwater River (T147N/R37W/S29), Clearwater County (alternate: none) – 400,000 gallons
- Installation #18: Walker Brook (T147N/R37W/S35), Clearwater County (alternate: installation #17) – 200,000 gallons
- Installation # 19: Unnamed Stream (T146N/R36W/S14), Clearwater County (alternate: installation #21) – 200,000 gallons
- Installation #21: Mississippi River (T146N/R36W/S35), Clearwater County (alternate: none) – 400,000 gallons
- Installation #22: Island Lake (T141N/R35W/S5), Hubbard County (alternate: none) – 2,000,000 gallons
- Installation #24: Hay Creek (T141N/R35W/S18), Hubbard County (alternate: installation #22) – 400,000 gallons

- Installation #26: Shell River (T139N/R35W/S17), Hubbard County (alternate: installation #22) – 600,000 gallons
- Installation #28: Shell River (T139N/R34W/S30), Hubbard County (alternate: none) – 400,000 gallons
- Installation #31: Big Swamp Creek (T138N/R32W/S8), Cass County (alternate: none) – 200,000 gallons
- Installation #33: Pine River (T138N/R29W/S18), Cass County (alternate: none) – 400,000 gallons
- Installation #34: Louise Lake (Blind Lake Creek) (T139N/R28W/S29), Cass County (alternate: none) – 200,000 gallons
- Installation #35: Unnamed Stream (T139N/R27W/S22), Cass County (alternate: none) – 200,000 gallons
- Installation #37: Moose River (T139N/R25W/S2), Cass County (alternate: installation #38) – 400,000 gallons
- Installation #38: Moose River at CR-29 (T51N/R26W/S29), Aitkin County (alternate: none) – 800,000 gallons
- Installation #39: Willow River (T50N/R24W/S7), Aitkin County (alternate: none) – 800,000 gallons
- Installation #40: Mississippi River (T51N/24W/S27), Aitkin County (alternate: none) – 1,200,000 gallons
- Installation #41: Unnamed Stream (T51N/R23W/S27), Aitkin County (alternate: installation #40) – 400,000 gallons
- Installation #42: Unnamed Stream, (T51N/R23W/S23), Aitkin County (alternate: installation #40) – 400,000 gallons
- Installation #46: Stoney Brook (T49N/R18W/S21), Carlton County (alternate: installation #47) – 800,000 gallons
- Installation #47: Big Lake (T49N/R18W/S21), Carlton County (alternate: none) – 600,000 gallons

14. This application contains the specifics of the proposed water appropriation at thirty-five (35) individual installations along with supporting figures and technical information. The total appropriation requested is 13.8 million gallons of surface water for dust suppression activities associated with the pipeline and access road construction. The pumping rate is up to 1,000 gallons per minute (gpm) (the range is from 300 gpm to 1,000 gpm) and are listed as conditions of Water Appropriation Permit No. 2018-3421 (the “Permit”).

15. DNR Water Appropriation Permit Application No. 2018-3421 is one of four water appropriation permit applications for the Project. The total water appropriation proposed by the

applicant for the project (dust suppression, hydrostatic testing/horizontal directional drilling, trench and construction dewatering, and construction dewatering near the Gully 30 calcareous fen) is in excess of 100 million gallons and is subject to high volume service fees for the review, analysis and preparation of each water appropriation permit. The applicant has paid the quarterly invoices prepared by the DNR for the associated high volume service fees for all water appropriation applications for the Project. *See* Minn. Stat. § 103G.301, subd. 2.

16. On December 20, 2019, after receiving comments on its initial application, Enbridge submitted a revised permit application (the “Application”) that included revisions to the number of dust suppression locations and the requested amount of water to be appropriated; site-specific plans describing proposed work including quantity of appropriation; installation sites; and a consideration of alternatives. On October 15, 2020, Enbridge submitted a revised Application that included updated dust suppression locations, revised amounts of water to be appropriated and updated plans. A signed contingency statement was also included in the Application materials per Minn. Stat. § 103G.285, subd. 6. On November 8, 2020 Enbridge resubmitted the same October 15, 2020 application with all relevant plans such as the EPP (including attachments), fugitive dust control and winter construction plan, this submittal is considered the final application (“Application”). DNR’s decision on Water Appropriation Permit 2018-3421 (the “Permit”) is based on the November 8, 2020 submittal of the application and plans.

17. Minn. Stat. § 103G.301, subd. 6 and Minn. R. 6115.0660, subd. 3(D) require an applicant to serve copies of the Application and supporting materials on the mayor of the city, secretary of the board of supervisors of the soil and water conservation district, or the secretary of the board of managers of the watershed district if the proposed project is within or affects a city or watershed district or soil and water conservation district. This requirement was waived because MPARS, the DNR online permitting and reporting system, automatically sends electronic notifications and relevant documents to the appropriate entities during the application and evaluation process.

18. The Application proposes an appropriation of 13.8 million gallons of surface water to suppress dust along the construction trench and corridor of the pipeline. The Application proposes to appropriate water from watercourses and lakes along the pipeline corridor and pump it into water trucks to apply to haul roads, access roads, and the construction right of way in non-frozen conditions to minimize dust from construction activities. Dust suppression is necessary to minimize adverse effects on air quality and vegetation adjacent to the construction workspace and access roads, and to ensure safe driving conditions by improving visibility. Some of the appropriated water will also be used to support decontamination of equipment as described in the Invasive and Noxious Species Management Plan, Attachment B of



the EPP. If work is completed in winter, the company may use the water for ice road development as outlined in the Winter Construction Plan. *See* Application, Supplemental Information, Section 2.2 and Attachment D received on November 8, 2020, and the November 2020 Winter Construction Plan, Section 1.4, and the November 2020 EPP received on November 8, 2020.

**B. The Application Was Circulated for Public Comment and for Comment from Government Entities.**

19. On March 18, 2019, the DNR posted all of Enbridge's permit applications and supplemental permit materials on the [DNR Line 3 Permitting website](#) for a 60-day public comment period, which closed on May 17, 2019. 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, the DNR issued GovDelivery notices informing recipients of the Application and notifying them of its availability on the permitting website.

20. The DNR requested comments on the Application through the GovDelivery email system from thirteen local soil and water conservation districts (SWCDs), three watershed districts, five tribal governments and thirteen counties. In addition, the DNR sent out a request for comments to State and federal agencies such as the United States Army Corps of Engineers (USCOE), Board of Water and Soil Resources (BWSR), Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDH), and Minnesota Department of Agriculture (MDA).

21. No comments were received from the thirteen SWCD's, the three watershed districts, the thirteen counties, the USCOE, BWSR, MPCA, MDH or MDA. Comments received from tribal governments are addressed below.

22. From March 22, 2019 through May 7, 2019 (original application dated September 2018), and from February 12, 2020 to March 12, 2020 (updated Application dated December 2019), the DNR requested internal comments on the Application.

23. 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](#).

24. The 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 submissions, there were numerous form-letter variants consisting of standard form-letter text that was altered through deletion or addition of sender-composed text.

25. 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.

26. 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. *See* Minn. R. 6115.0670, subp. 2(A)(8) (directing DNR’s consideration of comments in review of applications for water appropriation permits). Comments relevant to application 2018-3421 are addressed below.

**i. Comments by Red Cliff Band and DNR Response.**

27. Comments were received from the Red Cliff Band of Lake Superior Chippewa (“Red Cliff Band”) during the public comment period from March 18, 2019 to May 7, 2019.

a. The Red Cliff Band stated “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 listed above.” ***DNR response:*** 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 Independent Environmental Monitors (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 permit conditions.

**ii. Comments by Honor the Earth and DNR Response.**

28. Comments were received from the Honor the Earth during the public comment period from March 18, 2019 to May 7, 2019.

a. Honor the Earth has commented referring to DNR comments on the USCOE draft section 404 permit that during withdrawal adequate waterbody flow rates and volumes

must be maintained to protect aquatic life and allow for downstream uses. If the waterbody does not have adequate water flow, an alternative approved source must be used. Enbridge must monitor Q90s at specific gages as recommended by the MDNR. Enbridge must also support MDNR to install additional gages for monitoring purposes, as needed. Honor the Earth questioned, “Who determines this level? How is it monitored?” **DNR response:** DNR staff monitor flow conditions in all 81 major (HUC 8) watersheds within the state. If flow conditions fall below the Q90 low flow measurement in any of these watersheds, monitoring staff alert the water appropriation regulation program. The Q90 exceedance flow value is a stream discharge measurement that statistically is exceeded 90% of the time during a period of record. If the flows remain below the Q90 for 120 hours, the water appropriation regulation program initiates water permit suspension procedures within the watershed. The purpose of the permit suspensions is to protect instream aquatic resources and higher priority water uses such as drinking water. Enbridge’s proposed use of water for dust suppression would be subject to suspension under these conditions. The proposal includes appropriations in several different HUC 8 watersheds so suspensions would depend upon which specific installations were located within watersheds experiencing low water conditions.

### **iii. Public Comments and DNR Responses.**

29. Comments were received from the Chub Lake Association and residents along Chub Lake in Carlton County, Long and Island Lakes in Hubbard County, and Brush Lake in Becker County during the public comment period from March 18, 2019 to May 7, 2019. Many of the comments submitted to the DNR by the commenters identified above contained identical concerns. Because these commenters raised many of the same substantive concerns, the DNR responds to the substance of these comments in a thematic fashion rather than on a commenter-by-commenter basis.

a. Chub Lake Association and riparian landowners had concerns over utilizing Chub Lake in Carlton County for a water appropriation source for dust suppression as the lake is infested with Eurasian water milfoil and they are worried about spreading it to other non-infested portions of the lake and other waterbodies. They also raised concerns with public access and public safety at the proposed water appropriation installation location. **DNR response:** Based on these concerns, Enbridge removed Chub Lake as an installation for dust suppression in its December 20, 2019 revised application.

b. Comments were received from the public on the use of Long Lake and Island Lake in Hubbard County for water appropriation for dust suppression. These comments raised concerns about the potential for spreading of aquatic invasive species. **DNR response:** Long Lake was removed as a contingency source for the Project as there are other sources closer to the pipeline location. Island Lake is not infested with aquatic invasive species (AIS) and the applicant has an Invasive & Noxious Species Management Plan in place to control the spread of AIS.

c. Comments were received from the public on the use of Brush Lake in Becker County as a water appropriation source for dust suppression. Commenters raised concerns that the lake is small in size and there would be negative impacts from the appropriation. **DNR response:** Brush Lake was removed as a water appropriation site as there are other sources closer to the proposed Project location.

#### **iv. Internal Review Topics and DNR Considerations.**

30. As part of the DNR review of the Application the following topics were identified as issues that needed to be addressed.

a. Management of dissolved oxygen impairments for Installations #8 (Middle River in Marshall County), #9 (Snake River in Marshall County), #12 (Clearwater River in Red Lake County), #21 (Mississippi River in Clearwater County), #37 (Moose River in Cass County), and #38 (Moose River at CR-29 in Aitkin County). How will dissolved oxygen levels in these rivers will be monitored to ensure there are no impacts to fish? **DNR consideration:** After discussion with MPCA water quality staff regarding dissolved oxygen issue, it was determined that the small amounts of water being appropriated from the watercourses will have limited to no impacts on the dissolved oxygen levels as low DO is a response to biological conditions of the water and not physical conditions. All pumping will cease during low flow periods as per the DNR suspension criteria for water appropriations, these periods of low flow may occur during the known low dissolved oxygen period.

b. Comments about potential impacts to public use of lake access facilities at Installation #22 (Island Lake), which is located at a DNR Water Access Site. **DNR consideration:** Enbridge is required to acquire a lease through DNR's Lands and Minerals Division to appropriate water at the public access. Any impacts to the public access or recreational uses will be addressed through operating requirements in the lease.

c. Questions about smaller watercourses and whether the requested volumes are appropriate for those systems. How will monitoring take place to ensure flows will support aquatic life and pump rates will be lowered when needed? Installations identified are #19 Unnamed Stream (T146N/R36W/S14) in Clearwater County, #20 Bear Creek (T145N/R36W/S27) in Clearwater County, #31 Big Swamp Creek (T138N/R32W/S8) in Cass County, #32 Unnamed Stream (T138N/R32W/S3) in Cass County, #35 Unnamed Stream (T139N/R27W/S22) in Cass County, #41 Unnamed Stream (T51N/R23W/S27) in Aitkin County, #42 Unnamed Stream (T51N/R23W/S23) in Aitkin County and #46 Stoney Brook (T49N/R18W/S19) in Carlton County. **DNR consideration:** DNR staff monitor flow conditions in all 81 major (HUC 8) watersheds within the state. If flow conditions fall below the Q90 low flow measurement in any of these watersheds, monitoring staff alert the water appropriation regulation program. The Q90 exceedance flow value is a stream discharge measurement that statistically is exceeded 90% of the time during a period of record. If the flows remain below the Q90 for 120 hours, the water appropriation regulation program initiates water permit suspension procedures within the watershed. The purpose of the permit suspensions is to protect instream aquatic resources and higher priority water uses such as drinking water. Enbridge's proposed use of water for dust suppression would be subject to suspension under these conditions. The proposal includes appropriations in several different HUC 8 watersheds so suspensions would depend upon which specific installations were located within watersheds experiencing low water conditions.

d. Comments about the use of infested waters for appropriations, and a recommendation to use best management practices (BMPs) and avoid infested waters. **DNR consideration:** Enbridge has provided as part of the Application and EPP, an Invasive & Noxious Species Management Plan that outlines the steps that Enbridge will take to avoid the spread of aquatic invasive species to other watercourses, lakes, basins, and wetlands. This plan was approved by the DNR's Aquatic Invasive Species Specialists and compliance with this plan is a condition of the Permit. Three sites were removed from the installation list due to being infested waters.

e. Request that Installation #47 (Big Lake in Carlton County) appropriation have fisheries timing restrictions in place from October 15 to November 30 to prevent juvenile fish entrainment in this high profile gamefish lake. Mesh screening on intake pumps should be one-quarter inch. **DNR consideration:** Enbridge will use a 3/16 inch mesh screen to prevent fish entrainment, the 3/16 inch mesh screen should be small enough to not allow any fish entrainment. DNR does not apply fisheries timing

restrictions to appropriation permits because they do not involve changes to the course, current or cross section of public waters.

f. Natural Heritage Information System (NHIS) plan needs to be part of the application for the water appropriation permit for dust suppression. **DNR consideration:** The proposed appropriation would not incur any ground disturbing activities nor create a condition where NHIS features are likely to be impacted. Water organisms would be protected by curtailment of appropriation in low flow or low oxygen conditions.

#### **IV. ANALYSIS OF STATUTORY AND REGULATORY REQUIREMENTS**

31. The purpose of Minnesota Rules 6115.0060 to 6115.0810 is to provide for the orderly and consistent review of a water appropriation permit application in order to conserve and utilize the water resources of the state in the public interest. See also Minn. Stat. § 103G.101, and 103G.255. In the application of these parts, DNR is guided by the policies and requirements declared in Minnesota Statutes chapter 103G.

##### **A. Required Content of Application.**

32. All water appropriation permit applications must provide the information identified in Minn. Stat. § 103G.301, subd. 1 and Minn. R. 6115.0660. Unless otherwise waived by the DNR, an application for the appropriation of surface water must include the information required by Minn. Stat. § 103G.285, subd. 4 and 6.

33. The Application contains maps, plans and specifications describing the proposed appropriation of waters as required by Minn. Stat. 103G.301, subd. 1(a). See Minn. Stat. § 103G.301, subd. 1(a).

34. The Application details the appropriations and changes to be made along with waters of the state affected by the proposed appropriations. See Minn. Stat. § 103G.301, subd. 1(a)(2)-(3). Enbridge has provided information about anticipated changes in water resources, unavoidable detrimental effects, and alternatives to the Project. Minn. Stat. § 103G.301(b). DNR reviewed all public watercourses, ditches and basins and provided comments back regarding the potential for over pumping rates, limited water availability depending on time of year, aquatic species impacts and surrounding wetland impacts. Enbridge provided responses to DNR that removed some sources from consideration and provided information stating that in some cases there were no practical or feasible alternatives for dust suppression due to the proximity to the line. DNR has concluded that possible impacts to aquatic species are prevented through protected flows and elevations. DNR does not anticipate any impacts to surrounding wetlands as

the appropriations are temporary. If there is not adequate flow, an approved contingency source will be used. Each location was reviewed by DNR and discussed with Enbridge for potential impacts. Because all appropriations will be temporary in nature, there are no material impacts to the watercourses or water basins.

35. Enbridge properly submitted an application for the appropriation of surface water for dust suppression activities for the construction corridor, haul and access roads. Though Enbridge did not submit separate applications for each surface water or groundwater source from which water is proposed to be appropriated, Enbridge complied with Minn. R. 6115.0660, subp. 1 by submitting all information for each of the 35 water appropriation installations that would be required in separate applications. All 35 water appropriation installations for dust suppression are requested under Application No. 2018-3421 and any decision on this Application will address all 41 installations. *See* Minn. R. 6115.0660, subp. 1.

36. As required by Minn. R. 6115.0660, subp. 2., the applicant has demonstrated evidence of ownership or a license to use the land abutting the surface waters to be used for dust suppression activities. Enbridge has provided easement information and will be issued a lease with the DNR for appropriation at DNR Water Access Sites (Lease # LMIS010461).

37. The Application was completed on water appropriation application forms. Minn. R. 6115.0660, subp. 3(A). Enbridge has paid all applicable fees associated with the application. Minn. Stat. § 103G.301, subd. 2; Minn. R. 6115.0060, subp. 1; Minn. R. 6115.0660, subp. 3(B); *see also* Minn. Stat. § 103G.315, subd. 12. The Application contains aerial photographs, maps, and other descriptive data sufficient to show the location of the area of the proposed water use, the location of the proposed points of appropriations, and the outline of the property owned or controlled by Enbridge in proximity to the areas of use. *See* Minn. R. 6115.0660, subp. 3(C) (1)-(3). Minn. R. 6115.0660 subp. 3(C)(4) does not apply as the appropriation requests are for surface water only.

38. As required by Minn. R. 6115.0660, subp. 3(E), the Application contains a statement of justification supporting the reasonableness and practicality of the proposed use of water. The Application contains additional supplemental information supporting this statement of justification. *See* Application, Supplemental Information, Section 3.3.

39. As required by Minn. R. 6115.0660, subp. 3(F), the Application contains a detailed description of Enbridge's water management strategy. The Application indicates that Enbridge will pump water to temporary storage tanks or to haul trucks. *See* Application, Supplemental Information, Question 9, Section 6.

40. As required by Minn. Stat. § 103G.285, subd. 6 and Minn. R. 6115.0660, subp. 3(G)(1), Enbridge has provided a contingency plan as part of the Application that includes alternative sources if appropriation is restricted due to low flow conditions or low water basin levels. If a contingency source is not identified, Enbridge signed a contingency statement indicating that water will not be appropriated from a source of water experiencing low flows or water levels. Enbridge provided alternate sources for its proposed appropriation as well as a signed contingency statement for sources that did not have an alternate. *See* Application, Supplemental Information, Section 4.0; Table F-2 of Attachment F; and Attachment G.

41. As required by Minn. R. 6115.0660, subp. 3 (G)(2), the applicant has provided information that demonstrates reasonable alternatives for appropriating water have been considered including use of water appropriated during high flow and levels and stored for later use and including the use of groundwater. Other alternatives considered include the use of salts, brines, and other organic substances for dust suppression similar to use by state transportation agencies. However, due to the potential impacts to water quality, this alternative was dismissed. Enbridge also considered trucking water from municipal water sources to avoid using surface waters, but finding municipal sources close to the Project that would be able to provide the volume of water needed during dry conditions could contribute to water shortages. In addition, due to chemical additives added into municipal water sources, water quality effects would have to been addressed. *See* Application, Supplemental Information, Section 3.0.

42. As required by Minn. Stat. § 103G.285, subd. 4 and Minn. R. 6115.0660, subp. 3(G)(3), the applicant has provided information on natural basins less than 500 acres in surface area. Specifically, Enbridge indicated that it notified all riparian landowners and provided the commissioner with a list of notified landowners; attempted to obtain a signed statement from riparian landowners stating their support of the proposed appropriations; and provided an accounting of the number of signatures of riparian owners Enbridge was unable to obtain. Enbridge obtained statements of support from four of the thirteen riparian landowners on the one lake under 500 acres in surface area (Louise Lake (Blind Lake Creek)). *See* Application, Supplemental Information, Section 4.1 and Table 4.1-2.

43. 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.

## **B. Consideration of Factors in Minn. R. 6115.0670, subp. 2.**

44. Minn. R. 6115.0670, subp. 2(A) details factors that the DNR must consider, if applicable, when considering an application for a water appropriation permit. The DNR's consideration of each of the applicable factors is set forth in greater detail below.



45. Minn. R. 6115.0670, subp. 2 (A)(1): This rule requires the DNR to consider “the location and nature of the area involved and the type of appropriation and its impact on the availability, distribution, and condition of water and related land resources in the area involved.” The DNR’s review of the Application and supporting information in the record regarding the proposed locations and nature of the areas associated with the proposed appropriations shows that the appropriations are unlikely to impact the availability, distribution, and condition of water and related land resources in the areas involved. DNR reviewed all public watercourses, ditches and basins and provided comments regarding the potential for over pumping rates, limited water availability depending on time of year, aquatic species impacts and surrounding wetland impacts. Enbridge provided responses to the DNR that removed some sources from consideration and provided information stating there were no practical or feasible alternatives for dust suppression in some locations due to the proximity to the line. DNR has concluded that possible impacts to aquatic species are prevented through protected flows and elevations. DNR does not anticipate any impacts to surrounding wetlands as the appropriations are temporary. If there are not adequate flows, an approved contingency source will be used. Each location was reviewed by DNR and discussed with Enbridge for potential impacts. Because all appropriations will be temporary in nature, there are no material impacts to the watercourses or water basins. *See* Application, Supplemental Information, Section 3.3 and 4.0 and Attachment E.

46. Minn. R. 6115.0670, subp. 2(A)(2): This rule requires the DNR to consider “the hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use.” The Application and supporting information in the record detail the hydrology and hydraulics of the water resources involved. After review of the appropriation locations and flow records, the DNR concludes that the evidence in the record shows the capability of the resources to sustain the proposed appropriations based on existing and probable future use in the area. The amount of water requested will not impact the source waters as it is temporary in nature and is in small enough amounts to not harm aquatic life. If a source water does not have sufficient flows, the company will switch over to a contingency source or not appropriate from that location. *See* Application, Supplemental Information, Section 4.0.

47. Minn. R. 6115.0670, subp. 2(A) (3): This rule requires the DNR to consider “the probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects, and alternatives to the proposed appropriation.” The Application and Supplemental Information describe the environmental impacts and human impacts from the water appropriations. Enbridge selected its sources by attempting to balance the environmental and human impacts with feasibility. Enbridge prioritized sources within or adjacent to the construction right of way, access roads and haul roads in an effort to minimize disturbances and

impacts (including vegetation clearing or grading to allow access to water appropriation sites). The three objectives reviewed for each appropriation location were feasibility (closest location to construction right of way/access or haul roads, terrain and site conditions and ability to access site, and the amount of water needed and the availability of the water at the site), environmental impacts (hydrology and estimated availability of water throughout the year, presence of sensitive species, existing water quality impairments, aquatic invasive species and additional workspace required to access the water source) and impact to the human environment (adjacent land use such as public access, residential areas). Enbridge submitted the preliminary list of sites for review by DNR prior to submitting the application. DNR reviewed each site and provided comments back to the company based on its knowledge of each location and potential impacts that might arise with each site. The final list was agreed upon by the company and DNR with a contingency statement on the use of water. *See* Application, Supplemental Information, Section 3.3.

48. Minn. R. 6115.0670, subp. 2(A)(4): This rule requires the DNR to consider “the relationship, consistency, and compliance with existing federal, state, and local laws, rules, legal requirements, and water management plans.” As detailed herein, activities associated with the Project are subject to oversight under numerous state and federal permitting programs. The Permit is conditioned on Enbridge obtaining and maintaining all additional permits required by applicable federal, state, or local law. In particular, Enbridge will have to obtain approval from the relevant ditch authority for appropriations from public drainage ditches, if needed. The DNR did not receive any comments from local, state or federal government units on the proposed water appropriation for dust suppression activities. The DNR has determined that the proposed appropriations are consistent with state, regional, and local water and related land resources management plans. *See* Minn. Stat. § 103G.271, subd. 2.

49. Minn. R. 6115.0670, subp. 2(A)(5): This rule requires the DNR to consider “the public health, safety, and welfare served or impacted by the proposed appropriation.” The FEIS comprehensively discussed and analyzed the potential health and socioeconomic effects of the Project, including effects associated with its appropriation of water. The FEIS specifically analyzed potential human health impacts of the Project, including effects to drinking water and food sources. The DNR relies on this environmental review analysis in its consideration of the Application. In addition, the Permit requires monitoring of the impacts to water resources resulting or potentially resulting from the permitted appropriation.

50. Minn. R. 6115.0670, subp. 2(A)(6): This rule requires the DNR to consider “the quantity, quality, and timing of any waters returned after use and the impact on the receiving waters involved.” The FEIS comprehensively analyzed the potential significant impacts of the Project as it relates to water appropriations and potential impacts to water resources. The DNR

notes that all water used for dust suppression activities is consumptive and will not be discharged or returned to any receiving waters.

51. Minn. R. 6115.0670, subp. 2(A)(7): This rule requires the DNR to consider “the efficiency of use and intended application of water conservation practices.” To the extent possible, Enbridge will reuse water from the construction dewatering activities (described in water appropriation permit application no. 2018-3420) for dust suppression. *See* Application, Supplemental Information, Section 2.2.

52. Minn. R. 6115.0670, subp. 2(A) (8): This rule requires the DNR to consider “the comments of local and regional units of government, federal, and state agencies, private persons, and other affected or interested parties.” DNR did not receive any comments on the Application from local, regional, federal or state agencies, but did receive internal DNR comments as well as comments from tribal governments and private individuals on the water appropriations and has considered those comments. *See* Section IV(B) above.

53. Minn. R. 6115.0670, subp. 2(A)(9): This rule is inapplicable to the DNR’s consideration of the Application because Enbridge does not propose a diversion of any waters to any place outside of the state.

54. Minn. R. 6115.0670, subp. 2(A)(10): This rule requires the DNR to consider “the economic benefits of the proposed appropriation based on supporting data when supplied by the applicant.” Enbridge did not provide any economic benefit data in this Application, but the FEIS does address this issue. The DNR relies on this FEIS analysis in its consideration of the Application.

55. Minn. R. 6115.0670, subp. 2(B): This rule requires the DNR to further consider the following factors for appropriation from watercourses: 1) historic streamflow records, and where streamflow records are not available, estimates based on available information on the watershed, climatic factors, runoff and other pertinent data; 2) physical characteristics such as discharge, depth and temperature, and an analysis of the hydrologic characteristics of the watershed; 3) aquatic system of the watercourse, riparian vegetation and existing fish and wildlife management within the watercourse; 4) frequency of occurrences of high and low flows; 5) feasibility and practicability of off-stream storage of high flow for use in providing water supply during periods of normal low flows when supply is limited by existing and anticipated use. The DNR Area Hydrologists utilized historical gage data when available and United States Geological Service StreamStats for locations that are not gaged in order to review flow records and flow ranges including potential for seasonal variability in determining the appropriateness of the resource for the proposed appropriation. As described above, no appropriation will be

authorized if the flow levels fall below the Q90. DNR concludes that the limits on pumping during low flow conditions also protect aquatic organisms and sensitive vegetation. Off-stream storage is not feasible as the company would need to use many trucks or tanks to store water from the high flow time of the year. It is unknown when the construction process will start and when dust control will be needed, so appropriating from locations along the route was the most feasible and practical alternative. The proposed appropriation satisfies considerations set forth in Minn. R. 6115.0670, subp. 2(B).

56. Minn. R. 6115.0670, subp. 2(C).: This rule requires the DNR to further consider the following factors for appropriation from basins: 1) total volume of water within the basin; 2) slope of the littoral zone; 3) available facts on historic water levels of the basin and other relevant hydrologic factors; 4) cumulative long-range ecological effects of the proposed appropriation; 5) natural and artificial controls which affect the water levels of the basin. The DNR utilized available data to determine the appropriateness of each basin for the proposed appropriation volumes including historical lake level records, historical notes in regards to fish kills, and bathymetric maps to determine drawdown calculations. The DNR has set protective elevations for water basins based on important aquatic vegetation characteristics related to fish and wildlife habitat; public uses of the water basin; the total volume within the basin; and the slope of the littoral zone. The following protective elevations are required by the Permit. Island Lake (Hubbard County) has a protective elevation at the outlet of 1439.6 feet above sea level (NAVD 1988), Big Lake (Carlton County) is landlocked and has a protective elevation of 1310.0 feet (NAVD 1988, Louise Lake/Blind Creek (Cass County) has a protective elevation at the outlet of 1356.5 feet (NAVD 1988). (North American Vertical Datum of 1988 (NAVD 1988) is the vertical control datum used by surveyors and engineers to measure and relate elevations to the Earth's surface. NAVD 1988 is the official datum of the United States.) Based on applicable data the DNR determined that the proposed volumes to be appropriated from each basin in the application are reasonable and consistent with Minn. R. 6115.0670, subp. 2(C). Long-term impacts are not expected as the project is short-term (one year) and the amount of water requested for dust suppression is small enough that the source water can reasonably supply the appropriation. All water appropriation locations were reviewed based on known elevation data (if available) and any other appropriation from the source waters for any long-term or cumulative impacts. There are no other appropriations along the construction corridor from these source waters.

57. As outlined above, DNR has considered each of the factors identified in Minn. R. 6115.0670, subp. 2(A)-(C).

### **C. Consideration of Factors in Minn. R. 6115.0750 and 6115.0770.**

58. The Application is for a temporary (one-time), not more than 12 month, appropriation of water for dust suppression associated with the replacement of the Line 3 pipeline. *See* Minn. R. 6115.0750, subp. 2.

59. The applicant will measure and keep monthly and annual records of the quantity of water used or appropriated at the point of taking for each source under the Permit. *See* Minn. R. 6115.0750, subp. 3(A).

60. The applicant will instrument each pump at each installation site for appropriating water with a flow meter to measure the quantity of water appropriated within ten percent of the actual amount of withdrawal. *See* Minn. R. 6115.0750, subp. 3(B).

61. The applicant will be subject permit suspension if the flows in the watershed fall below the Q90 low flow level for more than 120 hours. Any suspensions of the permit will be specific to the authorized installations that are within the watershed that is experiencing the low flow conditions. No appropriations will be permitted when basin elevations are below protective elevations. *See* Minn. R. 6115.0750, subp. 3(C).

62. The applicant will report water use based on the calendar year by February 15 of the following year on forms provided by the commissioner (through MPARS) as well as pay the water appropriation use fees. *See* Minn. R. 6115.0750, subp. 4.

63. The applicant has provided a detailed description for its proposed water use indicating that water will only be utilized as needed, monitoring will be conducted to prevent negative impacts to aquatic organisms, contingency sources will be utilized when flows are low, and the water appropriated will be allowed to infiltrate following its application for dust suppression. This demonstrates the best available means and practices for assuring wise use and development of waters of the state in the most practical and feasible manner possible to promote the efficient use of waters. *See* Minn. R. 6115.0770.

### **D. The Proposed Appropriation Satisfies Minn. Stat. § 103G.285**

64. Pursuant to Minnesota Statutes § 103G.285, subd. 2, “if data are available, permits to appropriate water from natural and altered natural watercourses must be limited so that consumptive appropriations are not made from watercourses during periods of specified low flows.” The purpose of the limit is to safeguard water availability for in-stream uses and for downstream higher priority uses located reasonably near the site of appropriation. The DNR has

analyzed the potential impacts to the proposed surface water sources. Negative impacts to surface waters resulting from the proposed appropriation are not anticipated. Enbridge has signed a contingency statement stating that water will not be appropriated during periods of low flow. Enbridge will be subject permit suspension if the flows in the watershed fall below the Q90 low flow level for more than 120 hours. Any suspensions of the permit will be specific to the authorized installations that are within the watershed that is experiencing the low flow conditions.

65. Pursuant to Minn. Stat. § 103G.285, subd. 3(a), “permits to appropriate water from water basins must be limited so that the collective annual withdrawals do not exceed a total volume of water amounting to one-half acre-foot per acre of water basin based on Minnesota Department of Conservation Bulletin No. 25, ‘An Inventory of Minnesota Lakes,’ published in 1968.” The DNR has reviewed the information provided and analyzed the drawdown amounts based on the appropriation requested and the size of the basin. All water appropriated from the basins satisfies the one-half acre-foot per acre of water basin requirement. All basins are contingency sources and have protective elevation. DNR has reviewed the potential for cumulative impacts to the proposed basins and has determined that there are no other appropriations from these basins, which allows Enbridge to withdraw up to the one-half acre-foot water volume allowed in rule. See the water basins listed in ¶56.

66. Under Minn. Stat. § 103G.285, subd. 3(b), “as a condition to a surface water appropriation permit, the commissioner shall set a protective elevation for the water basin, below which an appropriation is not allowed. During the determination of the protective elevation, the commissioner shall consider: 1) the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat, 2) existing uses of the water basin by the public and riparian landowners; and 3) the total volume within the water basin and the slope of the littoral zone.” The DNR set protective elevations based on important aquatic vegetation characteristics related to fish and wildlife habitat; public uses of the water basin; the total volume within the basin; and the slope of the littoral zone. All water basin protective elevations are 1.5 feet below the Ordinary High Water Level for landlocked lakes and at the outlet elevation for non-land locked lakes. See the water basin protective elevations listed in ¶56.

67. Under Minn. Stat. § 103G.285, subd. 4, “as part of the application for appropriation of water from a water basin less than 500 acres in surface area, the applicant shall obtain a statement of support with as many signatures as the applicant can obtain from property owners with property riparian to the water basin.” Enbridge did provide the requested information on letters of support on the one basin less than 500 acres in size, Louise Lake (Blind Lake Creek). Four of the thirteen riparian landowners provided a statement of support for the

Project, while the other nine provided no response. Nothing in Minn. Stat. § 103G.285, subd. 4 requires that all riparian landowners, or a certain percentage of riparian landowners, support a project.

68. Under Minn. Stat. § 103G.285, subd. 5, “permits issued after June 3, 1977, to appropriate water from streams designated trout streams by the commissioner’s orders under section 97C.005 must be limited to temporary appropriations.” The DNR has reviewed the Application and no water appropriations are being proposed from designated trout streams, so Minn. Stat. § 103G.285, subd. 5 is not applicable.

69. Under Minn. Stat. § 103G.285, subd. 6, “an application for the use of surface waters of the state is not complete until the applicant submits, as part of the application, a contingency plan that describes the alternatives the applicant will use if further appropriation is restricted due to the flow of the stream or the level of a water basin. A surface water appropriation may not be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of not being able to appropriate water.” Enbridge provided alternate sources for most of their proposed appropriations as well as a signed contingency statement for sources that did not have an alternate.

70. As outlined above, the DNR has reviewed the Application for compliance with Minn. Stat. § 103G.285 and determines that the Permit satisfies the applicable statutory requirements.

#### **E. The Proposed Appropriation Satisfies Minn. Stat. § 103G.293**

71. Under Minn. Stat. § 103G.293, water appropriation permits “must provide conditions on water appropriation consistent with the drought response plan” established by the DNR. The Permit contains a condition requiring compliance with the statewide drought plan.

#### **F. The Proposed Appropriation Satisfies Minn. R. 6115.0670, subp. 3**

72. Issuing a permit on the proposed appropriation would not violate any of the limits imposed under Minn. R. 6115.0670, subp. 3(A). Subpart 3(A)(1) is inapplicable because the proposed appropriation does not involve an out-of-state diversion of waters. As detailed herein, the quantity of available waters of the state in the area involved is adequate to provide the amount of water proposed to be appropriated, and in the event of low flows or elevations, Enbridge will not appropriate water. Minn. R. 6115.0670, subp. 3(A)(2). As detailed herein, and based upon the FEIS and the Application, the proposed appropriation is reasonable, practical, and adequately protects public safety and promotes the public welfare. Minn. R. 6115.0670,

subp. 3(A)(3). As discussed above, the Application is consistent with state, regional, and local water and related land resources management plans. Minn. R. 6115.0670, subp. 3(A)(4). There is no unresolved conflict between competing users for the waters involved. Minn. R. 6115.0670, subp. 3(A)(5).

73. Minn. R. 6115.0670, subp. 3(B)(1) requires that for all watercourses, proposals for appropriation during periods of flood flows and high water levels shall be given first consideration unless this is not practical, reasonable, or feasible. The proposed appropriation will occur throughout approximately one year of construction, so appropriating during flood flow or high water levels may not always be practical, reasonable or feasible; flow levels will of course vary during the construction period.

74. Minn. R. 6115.0670, subp. 3(B)(2) provides that for natural and altered watercourses, except for drainage ditches established under Minn. Stat. chapter 103E, consumptive appropriation must be limited consistent with Minn. Stat. § 103G.285, subd. 2, provided that adequate data are available to set such limits for watercourses. Where protected flow is designated by the commissioner, no appropriation shall be allowed when the flow is below that protected flow. The company has provided a contingency statement on flows. Enbridge will be subject permit suspension if the flows in the watershed fall below the Q90 low flow level for more than 120 hours. If flows are below the Q90 protection flow, Enbridge will have to move to a contingency source or cease appropriations from these locations.

75. Minn. R. 6115.0670, subp. 3(B)(3) provides that permits to appropriate water for any purpose from streams designated trout streams by rule, pursuant to Minn. Stat., section 97C.021, shall be limited to temporary appropriations when not in conflict with the special designation, such as during periods of high flows or high water levels. This subpart is not applicable as no appropriations will be taken from trout streams.

76. Minn. R. 6115.0670, subp. 3(B)(4) requires that for natural and altered basins the commissioner shall: a) establish a protective elevation below which no appropriation shall be allowed; b) limit the collective maximum annual withdrawals to not exceed a total volume of water amounting to one-half acre-foot per acre of surface water basin based on Minnesota Department of Natural Resources Bulletin No. 25, “An Inventory of Minnesota Lakes”; and c) for natural and altered basins less than 500 acres, an application shall not be approved if the commissioner determines that the proposed appropriation would lower the water level in the basin to an extent which would deprive the public and riparian property owners of reasonable use of and access to the water. See ¶56 regarding the protective elevations for the water basins requested for dust suppression activities and ¶65 regarding the one-half acre-foot per acre



limitation. The proposed appropriation will not deprive the public and riparian property owners of access because the appropriation is temporary and subject to the other limitations described above.

77. Minn. R. 6115.0670, subp. 3(B)(5) provides the establishment of protective elevations and limitations on maximum withdrawals described above do not apply to artificial and altered basins constructed primarily for the purpose of storing high waters and flood flows as water conservation or contingency flow alternatives. The subpart is not applicable as the basins are not artificial or altered and the company will not be storing high water or flood flows.

78. Minn. R. 6115.0670, subp. 3(B)(6) requires protected flows and protective elevations shall be established for the purposes as defined in part 6115.0630 and shall be based on available information considered in subpart 2, items B and C. For new applications the proposed establishment of protected flows or protective elevations shall be part of the permit process outlined in subpart 3 including opportunity for public hearing. See ¶56 for water basin protective elevations and ¶64 for watercourse protected flows. Parties who may demand a contested case hearing on the Application are described in the order below.

79. Minn. R. 6115.0670, subp. 3(C) is inapplicable because the proposed appropriations are from surface water, not groundwater.

80. As outlined above, DNR has considered the Application under Minn. R. 6115.0670, subp. 3 and approval of the Application would satisfy the applicable regulatory requirements.

#### **G. The Proposed Appropriation Satisfies Minn. Stat. § 103G.801**

81. All appropriations located within the Great Lakes -- St. Lawrence River basin will comply the Great Lakes – St. Lawrence River Basin Water Resources Compact codified at Minn. Stat. § 103G.801. The Permit requires that water from the two water appropriation installation locations located within the Great Lakes – St. Lawrence River basin must be limited for use within the watershed and allowed to infiltrate into the ground surface. *See* Minn. Stat. § 103G.801.

#### **H. The Proposed Appropriation Satisfies the Prohibition on State Actions Affecting the Environment**

82. 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, and destruction.”

Minn. Stat. § 116D.04, subd. 6.

83. “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.”

Minn. Stat. § 116B.02, subd. 5.

84. In reviewing the administrative record, including the FEIS, and the Application, the DNR considered the quality and severity of any adverse effects of the Project on surface waters, including any potential long-term adverse effects to that resource, the types of resource at issue, the potential significant consequential effects of the proposed appropriation on other natural resources, and the direct and consequential impacts of the proposed appropriation on the environment.

85. As detailed herein, the proposed appropriation under the Application, subject to the conditions of the Permit, will comply with all applicable state environmental protection standards, including the requirements of Minnesota Statutes chapter 103G and Minnesota Rules chapter 6115 governing water appropriations.

86. The Project will be also subject to other state and federal requirements and must comply with all applicable environmental protection standards, including the requirements of the Permit.

87. Compliance with these regulatory requirements serves to ensure that the proposed appropriation of water under the Permit will not result in pollution, impairment, or destruction of natural resources.

88. As outlined above, the DNR has considered the proposed appropriation under the Permit in accordance with MEPA, and determines that the proposed appropriation satisfies the applicable statutory requirements.

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

## CONCLUSIONS

1. As detailed below, the DNR has reviewed the record and concludes that Enbridge has met its burden of proof and is entitled to issuance of the requested Permit subject to the terms and conditions therein.

2. In order to “conserve and use water resources of the state in the best interests of its people and to promote the public health, safety, and welfare,” it is the regulatory policy of the State to “control the appropriation and use of waters of the state.” Minn. Stat. § 103A.201, subd. 1. The Legislature delegated to the DNR the authority to develop a water resources conservation program for the state that includes the “conservation, allocation, and development of waters of the state for the best interests of the people.” Minn. Stat. § 103G.101, subd. 1. Similarly, the Legislature directed the DNR to adopt rules for the allocation of waters based on statutory water allocation priorities. *See* Minn. Stat. § 103G.261.

3. The DNR has the authority to issue water appropriation permits in accordance with its general authority to administer “the use, allocation, and control of waters of the state.” *See* Minn. Stat. § 103G.255 (1).

4. The DNR has the discretion to waive a hearing on a water appropriation permit application and order a permit to be issued or denied without a hearing. *See* Minn. Stat. § 103G.311, subd. 4.

5. Minn. Stat. § 103G.315, subd. 2 requires that the DNR make findings of fact on issues necessary for determination of the application considered. Orders by the DNR must be based upon findings of fact made on substantial evidence.

6. Enbridge's proposed appropriation of waters of the state requires a water appropriation permit. *See* Minn. Stat. § 103G.271, subd. 1, 4; Minn. R. 6115.0620.

7. The DNR has the authority to impose conditions on any water appropriation permit it issues. *See* Minn. Stat. § 103G.315, subd. 1; Minn. R. 6115.0670, subp. 3.

8. If the DNR concludes that the plans of an applicant for a water appropriation permit are reasonable, practical, and will adequately protect public safety and promote the public welfare, then the DNR must grant the permit. *See* Minn. Stat. § 103G.315, subd. 3.

9. The Application is complete and Enbridge has provided all information required for review under applicable statutes and rules. *See* Minn. Stat. § 103G.301, subd. 1, Minn. R. 6115.0660.

10. Any application information required under Minn. Stat. § 103G.285 not discussed herein is waived for just cause. *See* Minn. Stat. § 103G.285, subd. 1.

11. Any information required by Minn. R. 6115.0660 and 6115.0670 not discussed herein are waived as unnecessary or inapplicable. *See* Minn. R. 6115.0660, subp. 4, 6115.0670, subp. 4.

12. As detailed in the factual findings above, the DNR has reviewed and analyzed the record before the agency in connection with its consideration of applicable factors. *See* Minn. R. 6115.0670, subp. 2.

13. Water appropriations for dust suppression for the Project will be temporary and limited to one year or less in length of time.

14. Water appropriation for the Project at the 32 watercourse installations will be consumptive and not occur during low flow periods on the watercourses. Enbridge has signed a contingency statement stating that it will not appropriate water during low flow periods. The Project also includes alternative installations that can be used during periods of low flow. The appropriation will not impact aquatic life as the Permit requires the company to abide by the protected flows set for the watercourses and either use contingency sources or not appropriate. *See* Minn. Stat. § 103G.285, subd. 2.

15. Water appropriations for the Project at the three lake/basin installations will be consumptive and will amount to far less water than the one-half acre-foot per acre of water limitation for each basin as allowed for in rule. The DNR has set a protective elevation for each basin that is proposed for appropriation. The DNR has reviewed the available data (including historical lake level records, historical notes in regards to fish kills, and bathymetric maps to determine drawdown calculations) to determine if the volume of water requested for the proposed appropriation will have impacts to the basin. DNR has also reviewed information on important aquatic vegetation characteristics related to fish and wildlife habitat; public uses of the water basin; the total volume within the basin; and the slope of the littoral zone. Enbridge has signed a contingency statement stating that it will not appropriate water during low water level periods. The Project also includes alternative installations that can be used during periods of low water levels. The proposed appropriations for dust suppression for the Project will implement best management practices (i.e. screen sizing on pumps, protection elevations or flows) to reduce impacts to aquatic life in surface water resources where appropriations will be occurring. *See* Minn. Stat. § 103G.285, subd. 3.

16. Though an applicant is required to seek support from riparian property owners for any appropriation for a basin of less than 500 acres, no particular percentage of support is required. Enbridge received four statements of support from riparian landowners on Louise Lake (Blind Lake Creek). The level of support is one factor for DNR to consider. Regardless of the level of support of riparian landowners, DNR has the authority to issue a water appropriation permit that is reasonable, practical, and will promote public safety and protect the public welfare. *See* Minn. Stat. § 103G.285, subd. 4; Minn. Stat. § 103G.315, subd. 3.

17. The DNR may at any time cancel the permit to protect public interests; apply further conditions on the term of the permit and amend and reissue the permit; and/or apply laws existing before or after issuance of the water appropriation permit. *See* Minn. Stat. § 103G.315, subd. 11.

18. Permit application materials submitted by Enbridge for Permit Application No. 2018-3421 meet conditions and criteria set forth in Minn. R. 6115.0660, Minn. R. 6115.0670, and Minn. Stat. § 103G.285.

19. Enbridge has met its burden of proving by substantial evidence that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare. *See* Minn. Stat. § 103G.315, subs. 3, 6.

20. The DNR concludes that the appropriation and use of water under the Permit, subject to the conditions contained therein, is reasonable, practical, and will adequately protect public safety and promote the public welfare. *See* Minn. R. 6115.0670, subp. 3(A)(3). Accordingly, the Application must be granted. *See* Minn. Stat. § 103G.315, subds. 3, 5. The conditions, terms, and reservations included in the Permit are reasonably necessary for the safety and welfare of the people of the state. *See* Minn. Stat. § 103G.315, subd. 6(b).

21. Appropriations under the Permit, subject to the terms and conditions therein will not result in pollution, impairment, or destruction of natural resources. *See* Minn. Stat. § 116B.02, subd. 5.

22. Any Findings of Fact that might properly be termed Conclusions and any Conclusions that might properly be termed Findings of Fact are hereby adopted as such.

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

## **ORDER**

1. The DNR hereby waives any contested case hearing on the Application pursuant to Minn. Stat. § 103G.311, subd. 4.

2. Based upon all the files, records, and proceedings in this matter and upon the DNR's Findings of Fact and Conclusions, Water Appropriation Permit 2018-3421 is hereby issued to Enbridge subject to the conditions set forth in the Permit.

3. The applicant or the applicable municipality, watershed district or soil and water conservation district may file a demand for a hearing on the Application in accordance with Minn. Stat. § 103G.311, subd. 5 and Minn. R. 6115.0670, subp. 3, within 30 days after mailing or electronic transmission of notice of this Order.

DNR Authorized Signature *wet or e-signature*:

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Approved and adopted this 12th day of November, 2020  
Ecological and Water Resources Division Director Steve Colvin  
STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES