

**ENBRIDGE LINE 3  
REPLACEMENT PROJECT  
Calcareous Fen Management Plan  
for Gully 30 Calcareous Fen  
No Effect Concurrence for Viking 18,  
Viking Strip 4, Norden 18, Chester 24, Deep  
Lake and Stenerson Lake Calcareous Fens  
FINDINGS OF FACT, CONCLUSIONS AND  
ORDER OF THE COMMISSIONER**

11-12-2020

After review and due investigation and consideration, and based on the information and statements submitted by Enbridge Energy, Limited Partnership (“Enbridge”) in the Gully 30 Calcareous Fen Management Plan (“CFMP”) attached to and incorporated herein as Attachment A and Calcareous Fen No Effect Concurrence Requests attached to and incorporated herein as Attachments B and C, the applicant’s description of work proposed to be undertaken, public comments, and supplemental information in the administrative record or otherwise available to the Minnesota Department of Natural Resources (“DNR”), the Commissioner of the DNR now makes the following:

## **FINDINGS OF FACT**

### **I. EXECUTIVE SUMMARY**

1. Enbridge’s proposed Line 3 pipeline replacement project (“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 pipeline 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.
  
2. 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 Final EIS (“FEIS”) submitted by EERA, the PUC 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 impacts 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.
  
3. These findings relate to approval of the Calcareous Fen Management Plan (“CFMP”) with respect to the Gully 30 calcareous fen (“Gully 30 Fen”) and the No Effect Concurrence with respect to the Viking Strip 4, Viking 18, Norden 18, Chester 24, Deep Lake and Stenerson Lake calcareous fens. Several other permits and regulatory requirements will also be needed prior to Project 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 a utility license to cross public lands.

## II. ENVIRONMENTAL SETTING OF THE PROJECT

4. 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.



5. 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.
6. 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 water wetlands located within private lands, all public water crossings will be addressed in the Utility License to Cross Public Waters. One wetland at milepost 963.7 in Hubbard County does not require a work in public waters permit as the activity is vegetation 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.
7. The Project would also cross wetlands and streams not covered by DNR licenses or permits. These wetland and stream crossings are regulated by the U.S. Army Corps of Engineers Clean

Water Act section 404 permit and the Minnesota Pollution Control Agency Clean Water Act section 401 Water Quality Certification.

8. As required by Minn. R. 4410.7055, DNR has reviewed the FEIS for the Project and it serves to inform these findings. In the section entitled **Impacts on Minnesota Calcareous Fen Wetlands**, the FEIS stated that the Gully 30 Fen could be affected by construction of Enbridge's preferred route (Table 6.3.1.3-4 and Figure 6.3.1.3-1). The FEIS concluded "the other calcareous fens within 0.5 mile of the Applicant's preferred route (Chester 24 and Viking 18) would be unaffected by construction, as the route would avoid crossing these fens." In the area of Gully 30 Fen, the approved route for Line 3 follows Enbridge's preferred route. Potential impacts to the Gully 30 Fen include alteration of hydrology, introduction of contaminants, loss of rare or unique plant species, introduction of invasive species, and altered peat formation—all of which could be detrimental to the formation and proper function of a calcareous fen.
9. The results of calcareous fen surveys completed in 2008 during development of the Alberta Clipper pipeline identified the presence of a calcareous fen (the Gully 30 Fen), located 63 feet away from the pipeline centerline. As part of the environmental review for the Alberta Clipper project, a Gully 30 Fen Management Plan was developed in coordination with DNR. Portions of the approved route for the Project are co-located with the existing Alberta Clipper pipeline, including the area within the Gully 30 Fen. Because construction of the Project is likely to alter the Gully 30 Fen, a calcareous fen management plan is required pursuant to Minn. Stat. § 103G.223.

### **III. CALCAREOUS FEN APPROVALS**

10. Calcareous fens are rare, peat-accumulating wetlands dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The hydrology and chemistry provides an environment for specific and often rare hydrophytic plants. Because they are uncommon and often contain rare species, calcareous fens are afforded special protection in state law. Minn. Stat. § 103G.223 and Minn. R. 8420.0935, subp. 2.
11. DNR regulates calcareous fens pursuant to Minnesota Statutes section 103G.223 and Minnesota Rules 8420.0935. Minn. Stat. § 103G.223 states "Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary."

#### **A. The Gully 30 Calcareous Fen**

12. Pursuant to the requirements of Minn. Stat. § 103G.223, Enbridge submitted a CFMP for approval and authorization to alter the Gully 30 Fen in connection with the Project. The current

Line 3 pipeline crosses the Gully 30 Fen, located in Sections 19 and 30, Township 150 North, Range 39 West, Polk County. Consultants for Enbridge discovered the Gully 30 Fen in 2008 during the course of evaluating alternative routes for a different pipeline construction project—the Alberta Clipper—in an effort to avoid impacts to the nearby larger, higher quality Chester 24 calcareous fen. The Gully 30 Fen was officially identified (Fen ID No. 35382) by Commissioner’s Order dated August 20, 2009, and published in the State Register on August 31, 2009 (34 Minn. Reg. 278).

13. Four other Enbridge pipelines had already been constructed through the Gully 30 Fen prior to recognition that it was a calcareous fen in 2008. The highest quality portion of the Gully 30 Fen occurs within a shallow abandoned ditch, less than 50 feet wide. Much of the rest of the Gully 30 Fen has been adversely affected by drainage ditches and subsurface tile.

**B. The Viking 18 and Viking Strip 4 Calcareous Fens, the Norden 18 Calcareous Fen, the Chester 24 Calcareous Fen, and the Deep Lake and Stenerson Lake Calcareous Fens.**

14. The proposed pipeline replacement route also passes near the Viking 18 and Viking Strip 4 fens in Marshall County, the Norden 18 fen in Pennington County, the Chester 24 fen in Polk County, and the Deep Lake and Stenerson Lake fens in Clearwater County. Several of these fens, Viking 18, Norden 18, and Chester 24 are within 0.15 miles of the replacement route, while others are further away, but within 2 miles. The Viking 18, Viking Strip 4, Norden 18, and Chester 24 calcareous fens have been identified as calcareous fens by Commissioner’s Orders published in the State Register (34 Minn. Reg. 278 and 32 Minn. Reg. 2148-54). The Deep Lake and Stenerson Lake fens were more recently discovered and are in the process of being identified by Commissioner’s Order, to be published in the State Register as the Leon 33-a (Deep Lake) and Leon 33-b (Stenerson Lake) fens.

**IV. APPLICATIONS**

**A. Gully 30 Calcareous Fen Management Plan; Public Comments on Plan**

15. Because the proposed pipeline replacement route directly crosses the Gully 30 Fen, which entails work in the fen, the DNR required Enbridge to prepare and submit a CFMP. Minn. Stat. § 103G.223(a).
16. The DNR and Enbridge began discussion of Line 3 replacement work in the Gully 30 Fen in May 2015. The Pipeline Routing Permit was still pending with the PUC at that time. However, based on the understanding that Line 3 replacement route, if approved, could follow the existing pipeline alignment through Polk County and therefore impact Gully 30 Fen, DNR made an initial determination as to whether to require Enbridge to prepare a CFMP for the Project.
17. Enbridge submitted a draft, pre-application version of the CFMP on February 9, 2018. The first version of the CFMP submitted for approval was dated October 29, 2018. As a result of DNR review, subsequent versions of the CFMP were submitted February 20, March 4, December 23, 2019, March 20, 2020 and October 5, 2020. The DNR reviewed each submittal and provided

written comments to Enbridge directing revisions to the CFMP. The final version of the CFMP was submitted to the DNR on October 5, 2020. The majority of the discussion between the DNR and Enbridge in finalizing the CFMP focused on the timing of construction, the amounts and timing of construction dewatering, measures to minimize physical damage to the highest quality area of the Gully 30 Fen (Ditch Fen area), invasive species control, and baseline and post-project monitoring provisions.

18. On March 18, 2019, the DNR posted all of Enbridge's permit applications and supplemental permit materials, including the December 23, 2019 Draft CFMP, on the DNR Line 3 Permitting website (<https://www.dnr.state.mn.us/line3/index.html>) for a 60-day public comment period, which closed on May 17, 2019. The DNR published a GovDelivery (email newsletter) notice and press release notifying the public of the public comment period. Prior to the public comment period, the DNR issued GovDelivery notices informing recipients of the CFMP and notifying them of its availability on the permitting website.
19. DNR received eight comments related to potential impacts to the Gully 30 Fen. Most of the comments requested that DNR prevent Line 3 from going through the fen and require an alternative alignment. This issue is addressed in Paragraph 31 below. DNR also notes that the PUC, not the DNR, has the authority to select the pipeline route and issue the Pipeline Routing Permit for the Project. Additionally, one comment requested that DNR require an on-the-ground survey of the fen as well as DNR oversight of data collection at the fen. Enbridge did complete surveys of the Gully 30 Fen in 2016 and 2018, and DNR provides on-going oversight of all data collection at the fen.

#### **B. Water Appropriation Permit**

20. Enbridge submitted a water appropriation permit application on October 29, 2018, December, 2019 and a final complete application on October 14, 2020 for construction dewatering in the Gully 30 Fen.
21. The CFMP addresses steps to reduce the impacts of this construction dewatering. In this Findings of Fact, Conclusions and Order, DNR is approving the CFMP; DNR is approving the water appropriation permit application for construction dewatering at the Gully 30 Fen (water appropriation permit no. 2018-3689) in a separate order.

#### **C. Calcareous Fen No Effect Concurrence Requests**

22. On December 2, 2015, Enbridge submitted a "Calcareous Fen No Effect Concurrence Request" whereby Enbridge requested that DNR "concur that the Line 3 pipeline would not affect the Norden 18, Viking 18 or Chester 24 calcareous fens and that no management plans would be required." On February 23, 2016, DNR made an initial determination that impacts to Viking 18 and Norden 18 fens were unlikely and therefore DNR would not ask Enbridge to prepare management plans for those fens.
23. On September 13, 2018, Enbridge submitted another concurrence request, supplementing the previously submitted request with additional information about the Chester 24 fen, and additionally seeking DNR concurrence of no effects for the Viking Strip 4 and the Deep Lake and Stenerson Lake calcareous fens. On November 15, 2018, DNR made an initial determination that

impacts to the Viking Strip 4, Deep Lake or Stenerson Lake calcareous fens were unlikely and therefore DNR would not ask Enbridge to prepare management plans for those fens.

24. After DNR's review revealed a change from the previously submitted construction information relating to the Chester 24 fen, at DNR's request, Enbridge submitted a revised concurrence request on January 24, 2019.
25. On February 12, 2019, the DNR made an initial determination that impacts to the Chester 24 fen are unlikely and therefore DNR would not ask Enbridge to begin preparing a calcareous fen management plan. However, dewatering will occur near the Chester 24 fen at a valve site. To observe groundwater levels near the Chester 24 fen during before, during and after dewatering, and to use that data to better refine the groundwater model for this area, the DNR required Enbridge to install, and collect data from, an additional piezometer near the Chester 24 fen. On February 18, 2020, Enbridge acknowledged the additional monitoring requirement. DNR also noted that there will be three dewatering events along the pipeline near the Chester 24 fen --one to install the mainline, one to install the auger bore hole, and then one to complete the tie-in excavations. To further diminish the potential for impacts to the fen from dewatering, DNR recommended that these actions occur concurrently or as close in time as possible. Enbridge agreed to incorporate this timing restriction "if possible." The Project's water appropriation permit for construction dewatering, if approved, (permit no. 2018-3420) will include a condition detailing the specific timing for monitoring of water levels in the piezometer near the Chester 24 fen. DNR staff are confident that the volume, duration and location of pumping will not impact the Chester 24 fen, but want to obtain additional data to inform the groundwater model for the area and any future decisions. DNR has not set a protective groundwater elevation that would require Enbridge to cease dewatering. A condition in the dewatering permit would state that monitoring must continue for a specified time period after dewatering has ceased. Water levels in the piezometer near the Chester 24 fen should be comparable to those in other wells similarly situated within the Gully 30 Fen and consistent with previous monitoring. Persistent differences in water levels among well nests established at these sites (as determined by DNR in consultation with Enbridge's consultant) would need to be further investigated. If the project moves forward and monitoring indicates that water levels have not returned to pre-construction levels as a result of the Project, DNR would require a CFMP for the Chester 24 fen that includes additional monitoring and corrective procedures. DNR's approval of the No Effect Concurrence Request for the Chester 24 fen is contingent upon the issuance of a construction dewatering permit for the Project with the above condition.

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

26. Calcareous fens may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner decides some alteration is necessary and the work is done pursuant to an approved management plan. Minn. Stat. § 103G.223(a). Additionally, the commissioner may allow water appropriations that result in temporary reductions in groundwater on a seasonal basis under an approved management plan. Minn. Stat. § 103G.223(b).
27. The purpose of Minn. R. 8420.0935 is to provide minimum standards and criteria for identifying, protecting, and managing calcareous fens as authorized by Minn. Stat. § 103G.223. A main mechanism for protecting calcareous fens is the development of commissioner-approved management plans and requiring that any impacts to the fen only occur in accordance with the management plan. Minn. R. 8420.0935, subp. 4.

## **A. The Proposed Work Within the Gully 30 Calcareous Fen is Necessary**

28. Provided the Project receives all other required approvals and permits, the work within the Gully 30 Fen is necessary for the reasons described below.
29. The existing Line 3 pipeline already crosses the Gully 30 Fen and the proposed work will occur within the existing pipeline corridor.
30. Enbridge has previously conducted work in the Gully 30 Fen, under approved calcareous fen management plans, for construction of the Alberta Clipper pipeline and Line 3 maintenance.
31. Alternative routes for the Line 3 replacement pipeline in the Gully 30 Fen vicinity would either need to be on new alignment that is not already impacted by pipeline construction thereby having more overall environmental impact, or be located on an existing pipeline corridor through the Chester 24 calcareous fen, which is of higher quality than the Gully 30 Fen. The FEIS prepared on behalf of the PUC evaluated many different alternatives, and the PUC authorized the alignment that is addressed in the CFMP. The PUC, not the DNR, has the authority to select the route for the Project and issue the Pipeline Routing Permit.
32. The construction requirements stipulated in previous fen management plans for the Gully 30 Fen appear to have been successful in preventing long-term damage to the fen. Similar conditions, with refinements based on past experience, have been incorporated into the CFMP.
33. The CFMP requires Enbridge to employ special construction and post-construction measures to minimize impacts and restore the fen. The most significant measures are the following:
  - a. *Timing of construction.* Damage to the fen can be minimized by constructing during periods when groundwater levels are lowest and plants are not actively growing. The CFMP addresses this issue by requiring either winter construction, when soils are frozen and plants are completely dormant, or construction during the period from August 15 – September 30, when groundwater levels are at their lowest and plants have completed their reproduction and are beginning to senesce. Winter construction on frozen soils has an added advantage of minimizing soil compaction, but can also take longer due to complications of construction during extremely cold conditions. The construction timing conditions stipulated in the CFMP are sufficient to minimize damage to the fen.
  - b. *Sod and soil storage and replacement.* The CFMP requires Enbridge to remove the sod within the Ditch Fen area of the Gully 30 Fen in intact blocks, store and maintain the sod (via artificial irrigation, if needed) on site during construction, and replace the sod blocks in their original location following construction. The underlying soil is also to be removed in layers and replaced to maintain, to the extent possible, the original soil profile. These construction requirements were utilized during previous pipeline work in the Gully 30 Fen and have been successful in maintaining the calcareous fen plant community.
  - c. *Soil compaction.* The CFMP requires that work be conducted from timber mats placed on the ground to minimize soil compaction and associated adverse effects on the fen. In addition, the highest quality Ditch Fen area will be bridged to entirely avoid construction equipment directly traversing that area.



- d. *Water appropriation.* Because calcareous fens rely on sustained groundwater input, disruptions to groundwater can adversely affect the fen ecosystem. The CFMP and DNR water appropriation permit no. 2018-3689 contain conditions on the amount, timing and methods for construction dewatering designed to minimize impacts to the fen. Water appropriation will be temporary, as required by Minn. Stat. § 103G.223 (b).
- e. *Invasive species control and plant reestablishment.* The CFMP contains strict measures for controlling the introduction of invasive plant species into the highest quality areas of the calcareous fen, and stipulates replanting of disturbed soil areas (other than areas where the sod is to be stripped, stored and replaced) with a native species mix customized to the specific project area.

34. The CFMP requires Enbridge to conduct up to five years of post-construction monitoring of hydrology and vegetation to identify on-going impacts, which must be addressed by Enbridge at the DNR's direction. The CFMP contains monitoring release conditions which must be achieved to cease monitoring.

**B. A Management Plan is Not Needed for the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake, and Stenerson Lake Calcareous Fens**

35. DNR has reviewed information provided by Enbridge regarding the proposed Line 3 pipeline location, construction methods and construction dewatering and concludes that the pipeline construction and operation will not fill, drain or otherwise degrade the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake, and Stenerson Lake calcareous fens and that management plans are not required for the reasons below.
36. The information provided in the December 2, 2015, and January 24, 2019 "Calcareous Fen No Effect Concurrence Request" has informed DNR's decision that the pipeline route is sufficiently distant from the fens that impacts to the fens will not occur. The distance from the fens, 90 ft at the Chester Fen and greater than 380 ft at the other nearby fens, or the location of the construction is such that hydrologic impacts will not occur because the work will not intercept groundwater that is supplying the fen.
37. In the case of the Chester 24 fen, DNR is requiring the installation and monitoring of an additional piezometer to ensure groundwater elevations return to pre-construction levels and the Project does not cause any impact to the fen. This requirement would be included in a separate water appropriation permit for construction dewatering.
38. Based on the above information, DNR has concluded that construction and operation of the Project will not "fill", "drain", "impact", "alter" or "degrade" the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake or Stenerson Lake calcareous fen. Minn. Stat. § 103G.223(a); Minn. R. 8420.0935, subp. 4.
39. In the highly unlikely event that unanticipated impacts would occur to one or more of the above fens, DNR has the authority to require Enbridge to develop a CFMP and implement restoration of the fen(s) pursuant to Minn. R. 8420.0935, subp. 5 & 7.

**C. Prohibition on State Actions Affecting the Environment**

40. The Minnesota Environmental Policy Act 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.

41. “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.

42. In reviewing the CFMP and No Effect Concurrence Requests, DNR considered the quality and severity of any adverse effects of the proposed action on the relevant calcareous fens, including any potential long-term adverse effects, the unique nature of calcareous fens, the potential significant effects on other natural resources, and whether the affected natural resources are increasing or decreasing in number. *See State ex rel. Schaller v. County of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

43. Line 3 construction and operation through the Gully 30 Fen will not cause pollution, impairment, or destruction because impacts to the fen are minimized by the requirements in the CFMP. The CFMP is designed to ensure that construction will not materially adversely affect the Gully 30 Fen.

44. In addition, because Line 3 construction will not fill, drain or otherwise degrade the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake, and Stenerson Lake calcareous fens, Line 3 will not cause pollution, impairment or destruction of these natural resources.

45. Line 3 construction and operation in accordance with the CFMP and other required permits will comply with all applicable state and federal environmental protection standards, including the requirements on calcareous fens in Minn. Stat. § 103G.223 and Minn. R. 8420.0935.

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

### **CONCLUSIONS OF LAW**

46. DNR has the authority to regulate impacts to calcareous fens pursuant to Minn. Stat. § 103G.223.

47. Alteration of the Gully 30 Fen is necessary as part of construction and operation of Line 3 and will only occur pursuant to a calcareous fen management plan as required by Minn. Stat. § 103G.223 and Minn. R. 8420.0935.
48. Water appropriations for construction dewatering in the area of the Gully 30 Fen will be temporary and occur pursuant to a calcareous fen management plan as required by Minn. Stat. § 103G.223.
49. Line 3 construction and operation will not fill, drain or otherwise degrade the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake, and Stenerson Lake calcareous fens and therefore calcareous fen management plans are not required for these fens pursuant to Minn. Stat. § 103G.223.
50. Approval of the calcareous fen management plan is not prohibited by Minn. Stat. § 116D.04, subd. 6 because construction and operation of Line 3 will not cause pollution, impairment or destruction of the Gully 30 Fen provided that work is in compliance with the terms of the CFMP.
51. Approval of the no effect concurrence is not prohibited by Minn. Stat. § 116D.04, subd. 6 because construction and operation of Line 3 will not cause pollution, impairment or destruction of the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake, or Stenerson Lake calcareous fens.
52. 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.

### **ORDER**

1. Based upon the foregoing Findings of Fact and Conclusions contained herein and records before the agency, DNR approves the CFMP and orders that the Project may not fill, drain, or otherwise degrade the Gully 30 Fen, except as provided by the CFMP.
2. Calcareous fen management plans are not required for the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake, and Stenerson Lake calcareous fens, as the Project will not drain, fill or otherwise degrade those fens. DNR approves the No Effect Concurrence Requests for the Viking 18, Viking Strip 4, Norden 18, Chester 24, Deep Lake and Stenerson Lake calcareous fens. Enbridge would be required to install and monitor an additional piezometer at the Chester 24 fen, and this requirement would be set forth in water appropriation permit no. 2018-3420, if approved. This Order is contingent upon issuance of water appropriation permit no. 2018-3420 with the above condition.
3. Pursuant to Minn. R. 8420.0935, subp. 6, Enbridge, or if applicable, the fee title owner of the Gully 30 Fen, may file a demand for a contested case hearing on the CFMP within 30 days after the mailing of notice of this Order.

Approved and adopted this 12th day of November, 2020

STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES

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Steve Colvin  
Ecological and Water Resources Director  
Minnesota Department of Natural Resources