

**ENBRIDGE LINE 3
REPLACEMENT PROJECT
Water Appropriation Permit
No. 2018 – 3689
(Gully 30 Calcareous Fen)**

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

Water Appropriation Permit No. 2018-3689

Enbridge Line 3 Replacement Project

October 19th, 2020

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

**In the Matter of the Application for
Water Appropriation Permit No. 2018-3689**

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

After review of the application, due investigation of relevant information, and consideration of comments, and based on the information and statements contained in the permit application submitted by Enbridge Energy, Limited Partnership ("Enbridge"), the applicant's description of work proposed to be undertaken, public comments 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 ("DNR"), the Commissioner of the Minnesota Department of Natural Resources makes the following:

FINDINGS OF FACT

I. EXECUTIVE SUMMARY

1. Pursuant to the requirements of Minnesota Statutes section 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 control, and (4) construction dewatering near the Gully 30 calcareous fen ("Gully 30 Fen"). These Findings of Fact only address Enbridge's water appropriation permit application for construction dewatering near the Gully 30 Fen (the "Application"). 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.

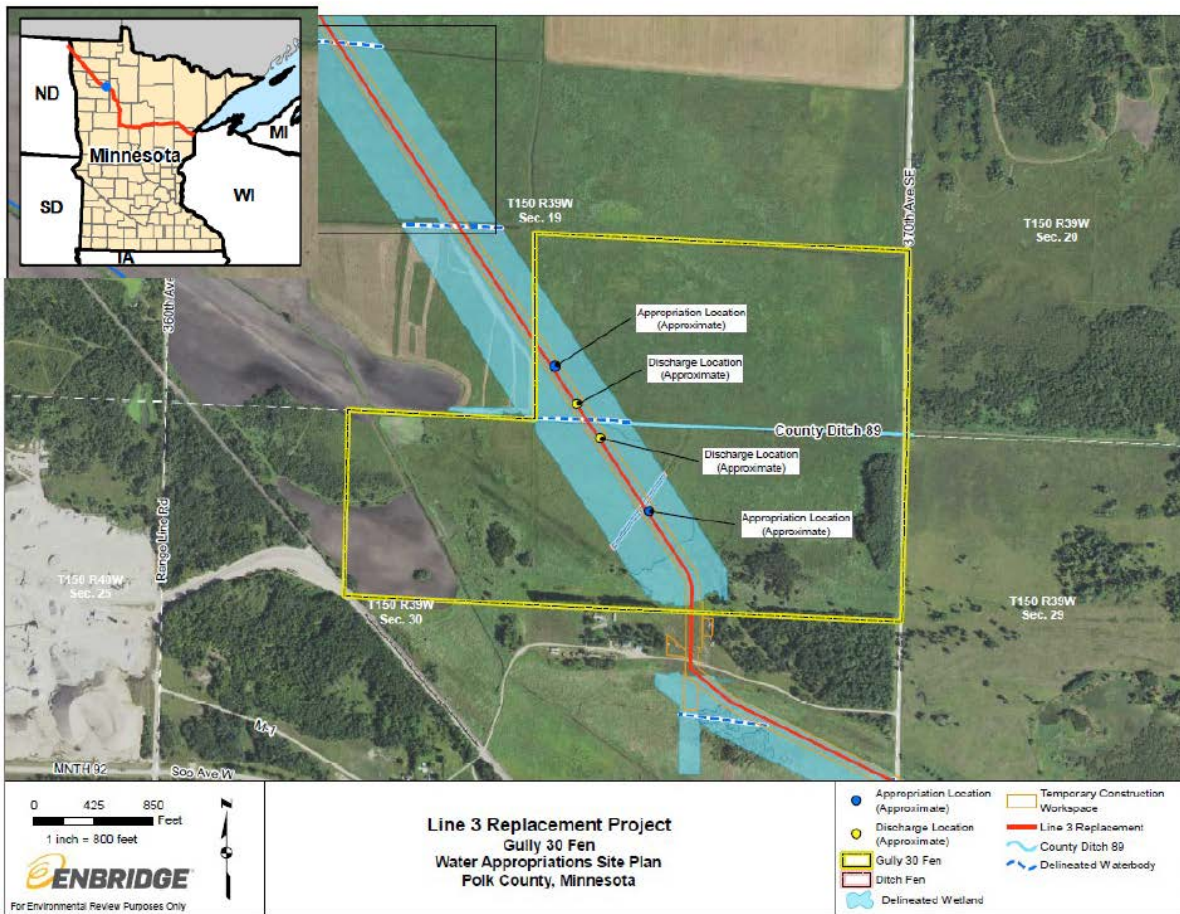
3. The Project has undergone significant review from the Public Utilities Commission (“PUC”). On April 24, 2015, Enbridge filed separate applications for a certificate of need (“CN”) and routing permit (“RP”) for the Project. The PUC authorized the Department of Commerce, Energy Environmental Review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

4. The permit Enbridge seeks in this proceeding relates solely to the appropriation of water for construction dewatering near the Gully 30 Fen. 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 water permits, a threatened and endangered species takings permit, a utility license to cross public waters, a utility license to cross public lands, and an approved calcareous fen management plan (“CFMP”). The Project would also cross wetland and streams areas not covered by DNR licenses or permits. These wetland and stream crossings are regulated by the Army Corp of Engineers (“USCOE”) Clean Water Act section 404 permit and the Minnesota Pollution Control Agency (“MPCA”) Clean Water Act section 401 Water Quality Certification.

II. ENVIRONMENTAL SETTING OF THE PROJECT

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. 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-feet wide in uplands and 95-feet 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 stream tributaries. 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 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 the Work in Public Waters permit application no. 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 USCOE Clean Water Act section 404 permit and the MPCA 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). 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 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).

10. The Gully 30 Fen is situated in the Lost River subwatershed near the community of Trail, Minnesota. Groundwater flows are driven by recharge occurring south of the Gully 30 Fen on coarse-textured Pleistocene terraces. The groundwater flow moves through coarse-textured outwash to the glacial lake plain and becomes saturated with calcium carbonate from the sediments that the water flows through. The general groundwater flow is a southwest to a northeast gradient, towards the Gully 30 Fen.

11. Calcareous fens are unique wetland ecosystems that benefit from specific statutory protections. Minn. Stat. § 103G.233 states that calcareous fens 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 or as provided in paragraph (b). Paragraph (b) in Minn. Stat. § 103G.223 states the commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan (“CFMP”). The DNR Commissioner is issuing an order approving an alteration of the Gully 30 Fen under the Gully 30 CFMP.

III. APPLICATION, CFMP, AND COMMENT PROCESS

A. Enbridge Submits Application to DNR for Water Appropriation in the Gully 30 Fen.

12. Enbridge proposes to dewater a construction trench in the Gully 30 Fen. Because the proposed appropriation is in excess of 10,000 gallons per day, a DNR water appropriation permit is required. *See* Minn. Stat. § 103G.271, subd. 4.

13. On October 29, 2018, Enbridge submitted an Individual Water Appropriation Permit Application – Construction Dewatering– Gully 30 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. 2018-3689.

14. The application included a description of the Project; a statement of the overall project purpose and need; a specific appropriation request for construction dewatering with supporting figures, photographs and technical information; an engineering technical memorandum on groundwater modeling performed for the estimated dewatering; and a draft CFMP.

15. On December 20, 2019, after receiving DNR comments on its initial application, Enbridge submitted a revised permit application (“Application”) that included revisions to the requested amount of water appropriated, the manner in which dewatering would take place, and the construction timeline at the project site. The December 20, 2019 revised submittal is considered the final Application.

16. Minn. Stat. § 103G.301, subd. 6 and Minn. R. 6115.0660, subp. 3(D) require an applicant to serve copies of the Application and supporting material 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 watershed district or soil and water conservation district or a city. This requirement was waived because MPARS, the DNR online permitting and reporting system, automatically sends electronic notification and relevant documents to the appropriate entity during the application and evaluation process.

17. The Application proposes an appropriation of up to 63.1 million gallons of groundwater to dewater a construction trench in the Gully 30 Fen. Dewatering is a process designed to remove accumulated water in trench areas that can interfere with construction. The

Application proposes to dewater the trench by utilizing two independently operated drain tile systems established on either side of the pipeline centerline. These systems would consist of a sequential series of up to eight flexible drain tile segments per side, made up of 6-inch perforated polyvinyl chloride (PVC) pipe with a geo-textile filter casing installed horizontally at approximately 250 to 500 foot lengths, and at an eight-foot depth and positioned four feet to either side of the trench centerline. Additionally, there would be one pump connected to each drain tile segment. All work would follow the approved CFMP and the issued water appropriation permit 2018-3689. The CFMP contains further detail on implementing construction dewatering without impacting the fen. *See e.g.*, CFMP Fig. 2.3-3 for a diagram of the proposed dewatering system; CFMP § 1.7.2 for a discussion of seasonal timing of construction.

18. Of the 63.1 million total gallons to be appropriated at the site, 47.3 million gallons would be appropriated at location No. 1, south of County Ditch 89, and 15.8 million gallons would be appropriated at location No. 2, north of County Ditch 89. Groundwater would be pumped from the water table aquifer at rates up to 2,100 gallons per minute at pump location No. 1, south of County Ditch 89, and at rates up to 700 gallons per minute at the pump location No. 2, north of County Ditch 89. *See* Application at 7-10, 50.

B. The Application Relies Upon the CFMP.

19. The Application makes reference to the CFMP. DNR is issuing a separate order approving the CFMP.

20. Per the approved CFMP, Enbridge is required to install temporary piezometers to monitor groundwater levels (a piezometer is a 2-inch pipe that is 8 – 10 feet long and equipped with a stainless steel well screen). The piezometers would be installed no less than 8 feet below the soil surface. These piezometers would be removed prior to construction trenching or after construction is completed. Enbridge has four piezometer nests (Gully Nests 1 through 4) consisting of one deep sub-peat well and one water table well each that it installed pursuant to an approved CFMP long-term monitoring program for the Alberta Clipper and LSr pipelines through the Gully 30 Fen. There are also two reference nests in the Chester 24 fen (Chester Nests 1 and 2). As part of the Project, Enbridge has already installed two additional piezometer nests (Gully Nests 5 and 6) at locations north and east of the Project site. All six piezometer nests have been in operation since 2018 and Enbridge will monitor all six nests until construction begins, which will require the removal of Gully Nests 3 and 4. The other nest (Gully 1-2 and Gully 5-6) will be monitored for the long-term post construction monitoring as part of the CFMP for the project. *See* CFMP Figure 2.5-1 for a drawing of the piezometer nest locations.

21. The Application and CFMP indicate that the impacts to groundwater and the calcareous fen would be minimized through construction best management practices. Any impacts would be restored based on DNR recommendations within the approved CFMP. The CFMP includes a five-year post-construction monitoring plan for vegetation and hydrology to identify on-going impacts, which must be addressed by Enbridge at the direction of the DNR. The approved CFMP contains monitoring release conditions which must be achieved to cease monitoring of the Gully 30 Fen. DNR Water Appropriation Permit No. 2018-3689 references as part of the permit that Enbridge must follow the approved CFMP and the long term monitoring of the hydrology and vegetation outlined in the CFMP. *See* CFMP Sections 2.5 and Section 2.6 for more information.

22. The CFMP states the project disturbance at the Gully 30 Fen may stimulate the regeneration of some calcareous fen plant species at the project site through exposure of an existing seed bank of calciphiles in the soil. *See* CFMP § 1.5.6.1. The re-establishment of calcareous fen plant species would be a benefit to the Gully 30 Fen.

23. The CFMP outlines procedures to remove the fen sod, create a storage area outside of the Gully 30 Fen area and mimic similar environmental conditions to maintain the plant species that are temporarily removed from the project site. *See* CFMP § 2.3.3.

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

24. 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.

25. On March 21, 2019 through May 10, 2019, the DNR requested internal comments on the Application. The DNR water appropriation permit program did not receive any comments from the internal review of the Application.

26. 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](#).

27. 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.

28. 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.

29. 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 2018-3689 are addressed below.

i. Public Comments and DNR Responses.

30. 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 17, 2019.

a. The Red Cliff Band stated that the “MDNR’s evaluation criteria states that ‘no impact is allowed unless DNR Commissioner determines some alteration is necessary under an approved management plan.’ The proposed Line 3 Project is not necessary and thus no impact on the Gully 30 Fen should be permitted.” ***DNR response:*** The PUC has issued a Certificate of Need and Pipeline Routing Permit for this Project. Prior pipelines have crossed the Gully 30 Fen without negative impacts, and crossing in this location avoids impacts to greenfield areas or more sensitive and higher quality nearby fens like the Chester 24 fen. Therefore, based on the route selected by the PUC in the Pipeline Routing Permit, some alteration of the Gully 30 is necessary and any alteration must comply with the approved CFMP.

b. The Red Cliff Band stated that “the MDNR Line 3 Webinar also stated that ‘dewatering rates’ and ‘release of monitoring and restoration requirements are still under development’ and evaluations are still ongoing. The MDNR should not permit any project without all the necessary evaluations and analysis completed.” ***DNR response:*** at the time of the public comment period, the DNR and Enbridge were still reviewing and discussing the CFMP

and Application. The revised CFMP and Application were submitted to DNR on December 20, 2019. DNR has completed its evaluation and analysis of this application and has approved the December 20, 2019 CFMP and Application as complete.

c. 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 condition of the PUC Route Permit. This condition requires the IEM to be under the control of and report to Department of Commerce, Minnesota Department of Agriculture, 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.

31. DNR received several comments indicated that DNR should not approve construction of the pipeline through the Gully 30 Calcareous Fen. These comments are addressed in DNR’s findings approving the CFMP and No Effect Concurrence.

IV. ANALYSIS OF STATUTORY AND REGULATORY REQUIREMENTS

32. The purpose of Minnesota Rules 6115.0600 to 6115.0810 is to provide for the orderly and consistent review of water appropriation permits in order to conserve and utilize the water resources of the state in the public interest. *See also* Minn. Stat. § 103G.101, § 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.

33. All water appropriation permit applications must provide the information identified in Minn. Stat. § 103G.301, subd. 1 and Minn. R. 6115.0660.

34. The Application contains maps, plans, and specifications describing the proposed appropriation of waters, as required by Minn. Stat. § 103G.301, subd. 1(a)(1). The Application details the appropriations and changes to be made along with waters of the state affected by the proposed appropriations. Minn. Stat. § 103G.301, subd. 1(a)(2), (3).

35. The Application contains analysis of the effects the proposed appropriation may have on the environment. Minn. Stat. § 103G.301, subd. 1(b).

36. Enbridge owns a 40-acre parcel of land in the Northwest Quarter of the Northeast Quarter of Section 30, Township 150 North, Range 39 West of Gully Township in Polk County. This is the location of where the appropriation will take place within the Gully 30 Fen. *See* Minn. R. 6115.0660, subp. 2.

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 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 because no test hole borings will be drilled. The proposed appropriation is for construction dewatering of the water table aquifer from the trench and is not for appropriation from the deeper confined aquifer. There are monitoring wells on site that have provided data to show the depth of the groundwater near the construction site, thus negating the need for test hole borings.

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 technical documents supporting this statement of justification in the form of the CFMP and the engineering technical memorandum on groundwater modeling.

39. As required by Minn. R. 6115.0660, subp. 3(F), the Application contains details on Enbridge's water management strategy. The Application indicates that Enbridge will not pump any water to a temporary storage facility. Enbridge also explains that, subject to DNR approval, it may reuse water pumped from the Gully 30 trench to support fugitive dust suppression activities described in Enbridge's separate water appropriation permit application no. 2018-3421. The Application additionally states that the water may be reused to support decontamination of equipment, as described in Enbridge's Invasive and Noxious Species Management Plan, which was included in Appendix B of Enbridge's Environmental Protection Plan (EPP).

40. As required by Minn. Stat. § 103G.287, subd. 1(a)(1) and Minn. R. 6115.0660, subp. 3(H), the Application and CFMP contain detailed information regarding the hydrogeology and hydrology including field investigations and a hydrologic study of the aquifer that will form the source of water for the requested appropriation. The monitoring, modeling, and analyses submitted are adequate to provide the information necessary to assess or predict impacts to other wells, surface waters, and groundwater resources from the requested appropriations. Enbridge

did not provide aquifer testing or test hole logs as the project is not long term nor taking deeper confined aquifer waters. All water being removed is from the trench during the construction of the pipeline and is water table aquifer water, not deep confined aquifers. *See* CFMP Attachment A.

41. As required by Minn. Stat. § 103G.287, subd. 1(a)(2), the Application details the maximum daily, seasonal, and annual pumping rates and volumes for the groundwater appropriations requested by Enbridge. The Application includes a Technical Memo from Barr Engineering and Environmental Consultants showing the modeled drawdown on the groundwater in the calcareous fen and how long it will take to dewater the trench to complete the construction of the pipeline. *See* CFMP, Attachment E.

42. As required by Minn. Stat. § 103G.287, subd. 1(a)(3), the Application contains information on groundwater reuse for dust control and decontamination of equipment, as described above. No water treatment is necessary for this proposed reuse of water.

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. Sufficient hydrologic data are available to allow the DNR to adequately determine the effects of the proposed appropriation. *See* Minn. R. 6115.0670, subp. 3(C)(3). The information provided with the Application is adequate to determine whether the proposed appropriation and use of water is sustainable and will protect ecosystems, water quality, and the ability of future generations to meet their own needs. Therefore, any additional requirements of Minn. Stat. § 103G.287, subd. 1 and Minn. R. 6115.0660 are hereby waived.

B. Consideration of Factors in Minn. R. 6115.0670, subp. 2(A).

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, supporting information and public comments in the record regarding the proposed location and nature of the area associated with the proposed appropriation shows that the appropriation is unlikely to impact the availability, distribution, and condition of water and related land resources in the area involved. *See* CFMP 1.5.5.1. The CFMP requires monitoring for impacts to the Gully 30 Fen resulting or potentially resulting from the permitted appropriation and construction of the pipeline. In the event actual or potential

impacts are identified through the required hydrologic and vegetation monitoring, the CFMP would require restoration or mitigation.

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 CFMP contain detailed information on the hydrology and hydraulics of the water resource involved, including field investigations and a hydrological study of the aquifers that will form the sources of water for the requested appropriation. *See* CFMP, Attachment E. After review, 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 CFMP requires monitoring for impacts to the Gully 30 Fen resulting or potentially resulting from the permitted appropriation. In the event actual or potential impacts are identified through the required monitoring, the CFMP requires restoration or mitigation.

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 CFMP detail the temporary impacts to the Gully 30 Fen and alternative options. *See* CFMP Section 1.7, 2.2, 2.3 and 2.4. After review, the DNR concludes that the evidence in the CFMP and Application materials in the record show that the anticipated changes to the resource will be temporary in nature. Specifically, Enbridge will complete the dewatering and construction during frozen conditions or when waters level are lowest (August and September), use sod-saving techniques to put the removed sod back in the same location it was taken from, and pump the water out of the trench into filter bags structures or equivalent and then released into County Ditch 89. The company will be required to provide long term monitoring of hydrology and vegetation to evaluate any impacts to the fen. The final route for the Project which crosses the Gully 30 Fen, was determined by the PUC in a final order dated May 1, 2020. 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.

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 water appropriation permit is conditioned on a requirement that Enbridge obtain and maintain all additional permits required by applicable federal, state, or local law. The DNR did not receive

any comments from local, state or federal government units on the proposed water appropriation from the Gully 30 Fen that indicated concerns with consistency or compliance with other regulations. Construction dewatering is a temporary activity and this specific dewatering is limited to a very small geographic area with limited interactions with other regulations or governmental jurisdictions. Enbridge's 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.” As discussed herein, the proposed groundwater use, done in accordance with the CFMP, is sustainable and will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply. The proposed use will only cause temporary reductions in groundwater resources and the CFMP includes measures to minimize physical damage to the fen, including conducting up to five years of post-construction monitoring of hydrology and vegetation to identify ongoing impacts in the Gully 30 Fen. In the event actual or potential impacts are identified through the required monitoring, the CFMP requires restoration or mitigation.

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.” Water will be discharged into County Ditch 89 via a filter bag. Enbridge's appropriation of water under its water appropriation permit is conditioned upon Enbridge having obtained any required authorization from the ditch authority and any other required permits.

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.” The Application explains that, subject to DNR approval, Enbridge may reuse water pumped in the Gully 30 trench to support fugitive dust control activities described in Enbridge's separate water appropriation permit application no. 2018-3421. The Application additionally states that the water may be reused to support decontamination of equipment, as described in Enbridge's Invasive and Noxious Species Management Plan, which was included in Appendix B of Enbridge's EPP. DNR finds that the water from the proposed appropriation may only be reused to (1) support fugitive dust control activities as described in water appropriation permit application no. 2018-3421 or (2) to support decontamination of equipment pursuant to Enbridge's Invasive and Noxious Species Management Plan.

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 government entities. Comments from tribal governments and are discussed 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 any 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 the FEIS analysis in its consideration of the Application.

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

C. Consideration of the Proposed Appropriation Under Minn. R. 6115.0670, subp. 2(D).

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

57. Minn. R. 6115.0670, subp. 2(D)(1), (2), (4), and (5): This rule requires the DNR to consider the “type and thickness of the aquifer,” “the subsurface area of the aquifer,” “existing water levels in the aquifer and projected water levels due to the proposed appropriation,” and “other hydrologic and hydraulic characteristics of the aquifer involved.” DNR has considered the above factors in evaluating the proposed appropriation and determined that water appropriated at this site will be from the water table aquifer and the excavation where the water appropriation will be occurring will not be deep enough to penetrate confined aquifers.

58. Minn. R. 6115.0670, subp. 2(D)(3) and (6): This rule requires the DNR to consider the “area of influence of the proposed well(s)” and “probable interference with neighboring wells.” There is one private well within 1000 feet of the proposed water appropriation, but the private well is deeper than the proposed excavation for the appropriation. There are also domestic wells in the City of Trail which is over one mile away from the

calcareous fen. Impacts are not expected at these wells because the water appropriation work is temporary, and these wells are all set deeper than the proposed dewatering trench.

59. As outlined above, the DNR has considered each of the factors identified in Minn. R. 6115.0670, subp. 2(D).

D. Consideration of Additional Requirements and Conditions for Dewatering Under Minn. R. 6115.0710.

60. Minn. R. 6115.0710 details additional requirements and conditions for water appropriation permits for dewatering, i.e., for the purpose of removing excess water. *See* Minn. R. 6115.0670, subp. 5. The Application involves dewatering.

61. The applicant for an appropriation permit involving dewatering “must show there is a reasonable necessity for such dewatering and the proposal is practical.” Minn. R. 6115.0710(A). The applicant has demonstrated that there is a need to dewater the trench at the calcareous fen to help facilitate safe working conditions for the company. Dewatering of the trench will help strengthen the trench walls and prevent the risk for wall slumping/failures. This type of dewatering was completed in past pipeline construction projects in the Gully 30 Fen and is a practical method of construction that ensures safety of the company employees. *See* CFMP Section 2.3.4.

62. The applicant for an appropriation permit involving dewatering “must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which the waters are discharged is adequate.” Minn. R. 6115.0710(B). The water will be discharged from the trench into a filter bag or other dewatering structure and then discharged into County Ditch 89. This is a legal ditch system and has the capacity to receive the dewatering amounts proposed without affecting the public interest as the dewatering will be completed in frozen conditions or when water levels are the lowest (August and September) reducing the amount of water that will be pumped out of the trench. Enbridge is responsible to obtain any necessary approvals from the ditch authority.

63. Enbridge’s proposed dewatering under the Application, and subject to the conditions therein, is not prohibited by any existing law. *See* Minn. R. 6115.0710(C).

64. As outlined above, the DNR has considered each of the factors identified in Minn. R. 6115.0710.

E. The Proposed Appropriation Satisfies Minn. Stat. § 103G.287.

65. Minn. Stat. § 103G.287, subd. 1 details the information that must be included in applications for groundwater appropriation permits. As detailed in section IV.A., the Application contains the information required under Minn. Stat. § 103G.287, subd. 1.

66. Minn. Stat. § 103G.287, subd. 2 provides that “[g]roundwater appropriations that will have negative impacts to surface waters are subject to the applicable provisions in section 103G.285.” This statute is inapplicable to the Application. Section 103G.285 imposes restrictions on appropriations from “water basins.” A calcareous fen is not a water basin within the meaning of Minn. Stat. § 103G.285 because, among other things, it does not have definable banks. Minn. Stat. § 103G.005, subd. 16. No impacts to surface waters are expected.

67. Under Minn. Stat. § 103G.287, subd. 3, the DNR is authorized to establish water appropriation limits to protect groundwater resources. As detailed in Paragraph 68 below, the source and volume of the proposed appropriation will not harm the sustainability of groundwater resources, ecosystems, or the ability of future generations to meet their own needs. Accordingly, additional appropriation limits beyond the proposed volume and rates in the Application are not necessary.

68. Enbridge does not seek to appropriate water from a designated groundwater management area, so Minn. Stat. § 103G.287, subd. 4 is inapplicable to DNR’s consideration of the Application.

69. Under Minn. Stat. § 103G.287, subd. 5, the DNR “may issue water-use permits for appropriation from groundwater only if the [DNR] determines that the groundwater use is sustainable to supply the needs of future generations and the proposed use will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells” The Application only proposes to appropriate water from the table aquifer, leaving deeper confined aquifers unaffected. Additionally, the proposed appropriation would be temporary, as the CFMP requires all construction to be completed within 30 days from the start of the dewatering. Once completed, the pipeline trench will be restored to pre-existing conditions, replacing sod in the same location as it was taken and all dewatering equipment will be removed or disabled per the CFMP. Comprehensive monitoring, including the installation of piezometers, will be undertaken pursuant to the CFMP and the associated water appropriation permit. The CFMP also requires restoration or mitigation in the event monitoring data results show unacceptable impacts to the fen as a result of the appropriation. Accordingly, DNR has determined that the appropriation of groundwater, under the conditions set forth in the Application and CFMP, is sustainable to supply the needs of future generations and will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water

supplies and private domestic wells. The appropriation will be temporary and will only remove water from the water table aquifer for the construction of the pipeline.

70. As outlined above, the DNR has reviewed the Application for compliance with Minnesota Statute § 103G.287 and determines that the Permit satisfies the applicable statutory requirements.

F. 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 water appropriation permit contains a condition requiring compliance with the statewide drought plan.

G. 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 are adequate to provide the amounts of water proposed to be appropriated. Minn. R. 6115.0670, subp. 3(A)(2). As detailed herein, and based upon the FEIS, the Application, and the CFMP, the proposed appropriation is reasonable, practical, and adequately protects public safety and promotes the public welfare. Minn. R. 6115.0670, subp. 3(A)(3). To DNR’s knowledge, 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.C.(1) requires that the amount and timing of water appropriated be limited to the safe yield of the aquifer to the maximum extent feasible and practical. As discussed above, the proposed appropriation is not a long-term appropriation from a confined aquifer, but instead represents a temporary appropriation from the water table aquifer. Therefore, DNR has no concern that the proposed appropriation would exceed the safe yield of the aquifer.

74. After the analysis and review of the record detailed herein, the DNR has not found substantial evidence establishing a direct relationship of ground and surface waters exists such that the appropriation would have an adverse impact on surface waters through reduction of flows under Minn. R. 6115.0670, subp. 3(C)(2). As explained in paragraph 65, a calcareous fen does not meet the definition of a “water basin” and therefore is not a surface water. Therefore, this rule is inapplicable.

75. After the analysis and review of the record detailed herein, the DNR concludes that sufficient hydrologic data are available to allow the DNR to determine the effects of the proposed appropriation in accordance with Minn. R. 6155.0670, subp. 3(C)(3). The CFMP requires restoration or mitigation in the event monitoring data results show unacceptable impacts to the Gully 30 fen are being caused by the proposed appropriation.

76. 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.

H. The Proposed Appropriation Satisfies Minn. Stat. § 103G.223.

77. Minn. Stat. § 103G.223 only permits water appropriations that cause temporary reductions in groundwater resources affecting a calcareous fen:

(a) 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 or as provided in paragraph (b). Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

(b) The commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan.

Minn. Stat. § 103G.223.

78. Based upon the analysis and review of the record detailed herein, the DNR concludes that the proposed appropriation at the Gully 30 Fen will only cause temporary reductions in groundwater resources. The project will be completed in 30 days from the start of the dewatering and take place during the frozen conditions or when water levels are the lowest (August-September), which will reduce the amount of water appropriated. The project will only dewater from the water table aquifer within eight feet of the ground surface and only in the area

that is needed for the construction of pipeline. Any impacts to the groundwater resource will be temporary in nature and all work will take place in accordance with the CFMP.

I. The Proposed Appropriation Satisfies the Prohibition on State Actions Affecting the Environment.

79. 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.

“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.

80. In reviewing the administrative record, including the FEIS, the Application, and CFMP, the DNR considered the quality and severity of any adverse effects of the Project on the Gully 30 Fen, including any potential long-term adverse effects to that resource, the types of resources 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 Gully 30 Fen. *See State ex rel Schaller v. County of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

81. As detailed herein, the proposed appropriation under the Application, subject to the conditions of the water appropriation permit and the CFMP, 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.

82. The potential effects on natural resources resulting from the Project and project alternatives were comprehensively analyzed within the CFMP. Extensive monitoring is required under the CFMP and the associated water appropriation permit. The CFMP requires restoration or mitigation in the event monitoring data show unacceptable impacts to the Gully 30 Fen are being caused by the appropriation.

83. The Project will be also subject to other state and federal requirements and must comply with all applicable environmental protection standards.

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

85. 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. 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 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. Minn. Stat. § 103G.261.

2. 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).

3. 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. Minn. Stat. § 103G.311, subd. 4.

4. 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. *Id.*

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

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

7. 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. Minn. Stat. § 103G.315, subd. 3.

8. The Application is complete and Enbridge has provided all information required for review under applicable statutes and rules. *See* Minn. Stat. §§ 103G.287, subd. 1(a), 103G.301, subd. 1, Minn. R. 6115.0660.

9. Any application information required under Minn. Stat. § 103G.287, subd. 1 not discussed herein is waived on the grounds that the information provided with the Application is adequate to determine whether the proposed appropriation of water is sustainable and will protect ecosystems, water quality, and the ability of future generations to meet their own needs. *See* Minn. Stat. § 103G.287, subd. 1(b).

10. Any information required by Minn. R. 6115.0660, 0.670 and .0710 not discussed herein are waived as unnecessary or inapplicable. *See* Minn. R. 6115.0660, subp. 4, 6115.0670, subp. 4.

11. 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.

12. As detailed herein, Enbridge’s proposed groundwater use is sustainable to supply the needs of future generations and is subject to all applicable permitting and regulatory requirements including but not limited to the ongoing monitoring and management requirements of the CFMP. When appropriated in accordance with these requirements, and in compliance with the conditions of the permit and CFMP, the proposed appropriation will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells. *See* Minn. Stat. § 103G.287, subd. 5.

13. Enbridge’s proposed groundwater use is temporary construction dewatering without long-term effects. Thus, the groundwater use will only cause “temporary reductions in groundwater resources” as permitted by Minn. Stat. § 103G.223.

14. Enbridge’s proposed reuse of the groundwater to support (1) the fugitive dust suppression activities described in water appropriation permit application no. 2018-3421 and (2) the decontamination of equipment described in Enbridge’s Invasive and Noxious Species Management Plan is consistent with the CFMP and is hereby approved. No water treatment is necessary for this proposed use.

15. Enbridge has shown that there is a reasonable necessity for dewatering and that its dewatering proposal is practical. Minn. R. 6115.0710(A). The proposed dewatering will be temporary and occur pursuant to an approved CFMP. Enbridge has shown that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate. Minn. R. 6115.0710(B). The proposed dewatering, in accordance with the conditions contained in the water appropriation permit and the CFMP, is not prohibited by any existing law. *See* Minn. R. 6115.0710(C).

16. Enbridge has met its burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare. Minn. Stat. § 103G.315, subds. 2, 6(a).

17. The DNR concludes that the appropriation and use of water under the water appropriation 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. Minn. Stat. § 103G.315, subd. 6(b).

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

19. 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 2018-3689 is hereby issued to Enbridge subject to the conditions set forth in the permit and in the CFMP.

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, which must be filed within 30 days after the mailing or electronic transmission of notice of this Order.

DNR Authorized Signature *wet or e-signature*:

// _____ //

Approved and adopted this _____ day of _____, 2020

Steve Colvin

Ecological and Water Resources Division Director

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES