DEPARTMENT OF NATURAL RESOURCES

ENBRIDGE LINE 3 REPLACEMENT PROJECT

Water Appropriation Permit No. 2018 – 3420

(Construction Dewatering)

FINDINGS OF FACT, CONCLUSIONS AND ORDER

Water Appropriation Permit No. 2018-3420

Enbridge Line 3 Replacement Project

November 12th, 2020

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Application for Water Appropriation Permit No. 2018-3420	**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 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) construction dewatering near the Gully 30 calcareous fen. These Findings of Fact only address Enbridge's water appropriation permit application for trench and construction dewatering ("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 boarder. 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

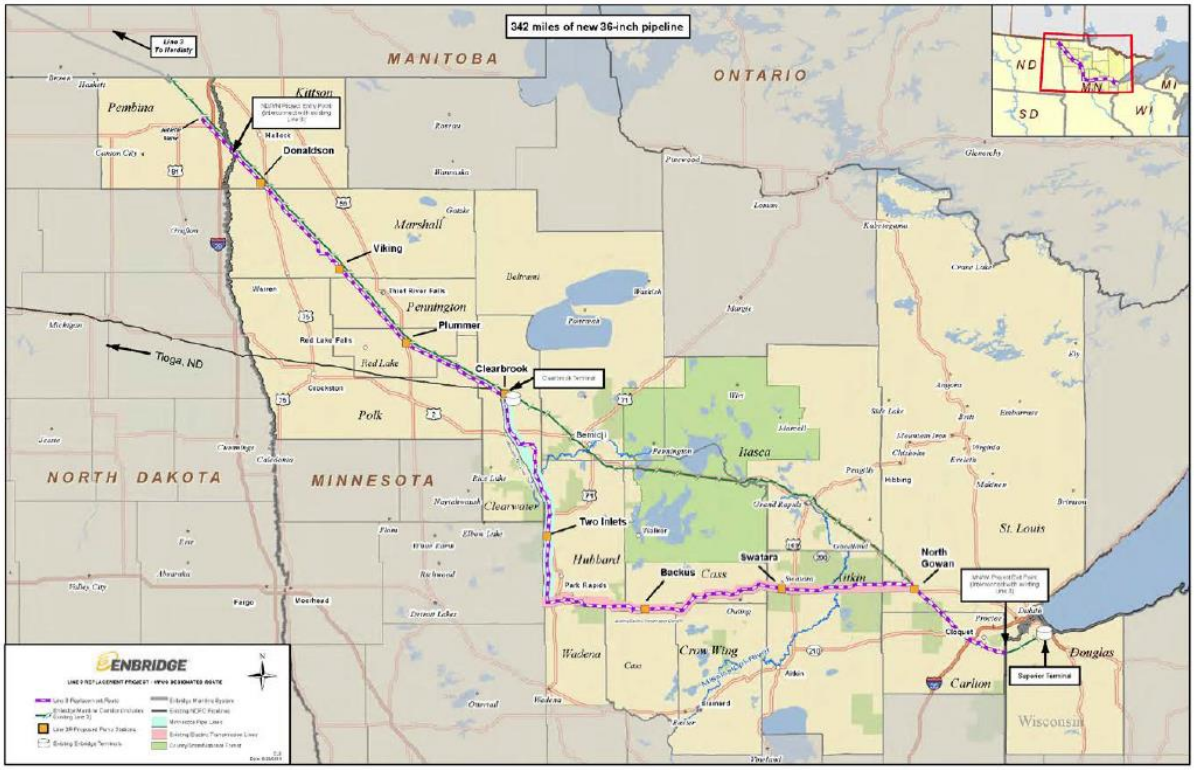
existing electric transmission line and railroad rights-of-way and traversing greenfield areas until crossing the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota. The route would end at the existing Enbridge terminal in Superior, Wisconsin.

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 of 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 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 authorization under a calcareous fen management plan ("CFMP"). The Project would also cross wetlands and streams not covered by DNR licenses or permits. These wetland and stream crossings would be regulated by the Army Corps of Engineers ("USCOE") Clean Water Act section 404 permit and a 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-feet wide in uplands and 95-feet wide in wetlands. The pipeline route also includes additional temporary construction workspaces.

7. The Project proposes 72 public waters crossings, including five basins, 61 watercourses, 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 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 wetlands 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 no. 2018-3419.

8. The Project would also cross wetlands and streams not covered by DNR licenses or permits. These wetland and stream crossings would be regulated by a USCOE Clean Water Act section 404 permit and a 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. The FEIS stated that construction activities, including dewatering and trenching, could affect groundwater quantity and quality. The FEIS stated that such activities are subject to a DNR water appropriation permit in order to ensure impacts on groundwater are temporary and minor. *See, e.g.*, FEIS §§ 5.2, 6.3.

10. Enbridge proposes to avoid any impact to threatened and endangered plant species along the pipeline corridor in accordance with Minn. Stat. § 84.0895. A threatened and endangered species takings permit will be required for individual threatened or endangered plant species that cannot be avoided during pipeline construction.

III. APPLICATION AND COMMENT PROCESS

A. Enbridge Submits Application for Groundwater Appropriation for Trench and Construction Dewatering.

11. Enbridge proposes to appropriate groundwater for trench and construction dewatering. Because the proposed appropriation is in excess of one million gallons a year, a DNR water appropriation permit is required. See Minn. Stat. § 103G.271, subd. 4.

12. On September 13, 2018, Enbridge submitted DNR Water Appropriation Permit Application No. 2018-3420. Enbridge submitted a $150 check covering the permitting fee in accordance with the administrative rule. The submitted material included a description of the Project; a statement of the overall project purpose and need; a specific appropriation request for construction dewatering with supporting tables, map, site plan, and the Environmental Protection Plan ("EPP"). On December 20, 2019, after receiving DNR comments on its initial application, Enbridge submitted a revised permit application that included revisions to the water reuse for buoyancy process on push-pulls, changes to the pumping rates for facility construction and added in more dewatering spreads. On October 16, 2020 Enbridge submitted a revised application that had minor revisions that included revisions to construction spread miles and updated plans. On November 8, 2020 Enbridge resubmitted the same October 16, 2020 application with all the relevant plans such as the EPP (including attachments) and Invasive Species Management Plan, this submittal is considered the final application ("Application"). . DNR's decision on Water Appropriation Permit 2018-3420 (the "Permit") is based on the November 8, 2020 submittal of the application and plans.

13. The Application proposes to use pumps to appropriate water from along the pipeline corridor for construction dewatering activities including dewatering of the pipeline trench, dewatering the excavation area for the above ground facilities (i.e. valves sites and pump

stations) and appropriation of water from the groundwater trench to use as buoyancy water in the push-pull pipe installation processes. A push-pull method can only be done in non-frozen conditions where there is sufficient inundation to push-pull or float a piece of pipe into the trench. This type of crossing method is usually used in saturated wetlands or peatlands where there are loose soils or low-bearing strength soils. In these areas, a trench is excavated from more stable soil locations, then a preassembled pipe is pushed-pulled or floated into position across the trench. Once the pipe is in place, floats (if used) will be removed and the pipe will sink. Buoyancy control methods may be used as well. Enbridge proposes that the groundwater will be pumped from the trenches with portable pumps at a maximum of 800 gallons per minute. If using a well-point system because traditional dewatering techniques are not feasible, the maximum pumping rate for the well-point system is 1,500 gallons per minute. To be consistent with any National Pollutant Discharge Elimination System ("NPDES")/State Disposal System ("SDS") permit issued by MPCA, the appropriation and discharges for well-point systems will be limited to a maximum of 1,500 gallons per minute (avg. 1,200 gallons per minute). This is a condition on the DNR water appropriation permit. There are 22 groundwater installations listed in the Application. These installations are areas of trench or other construction excavations where Enbridge anticipates construction dewatering to be necessary. *See* Application, Supplemental Information, Section 6.1, and Attachments B and C.

- Installation #1: Pipeline trench from Minnesota/North Dakota border to Donaldson pump station, Kittson County (12.6 miles) –1,843,296 gallons
- Installation #2: Donaldson pump station, Kittson County (0.10 miles)– 10,000,000 gallons
- Installation #3: Pipeline trench from Donaldson pump station to Viking pump station, Kittson & Marshall Counties (33.6 miles) – 6,098,000 gallons
- Installation #4: Viking pump station, Marshall County (0.10 miles) – 21,000,000 gallons
- Installation #5: Pipeline trench from Viking pump station to Plummer pump station, Marshall, Pennington & Red Lake Counties (28.8 miles) – 12,541,134 gallons
- Installation #6: Plummer pump station, Red Lake County (0.10 miles) – 10,000,000 gallons
- Installation #7: Pipeline trench from Plummer pump station to end of Construction Spread 1, Red Lake and Polk Counties, (19.1 miles) – 27,557,933 gallons
- Installation #8: Pipeline trench from end of Construction Spread 1 to Clearbrook Terminal, Polk & Clearwater Counties, (13.1 miles) – 5,733,794 gallons
- Installation #9: Clearbrook pump station, Clearwater County (0.10 miles) – 15,000,000 gallons
- Installation #10: Pipeline trench from Clearbrook pump station to Hubbard County line, Clearwater County (36.4 miles) – 22,876,623 gallons

- Installation #11: Pipeline trench from Hubbard County line to Two Inlets pump station, Hubbard County (13.3 miles) – 7,572,080 gallons
- Installation #12: Two Inlets pump station, Hubbard County (0.10 miles) – 10,000,000 gallons
- Installation #13: Pipeline trench from Two Inlets pump station to end of Construction Spread 2, Hubbard County (9.0 miles) – 8,974,616 gallons
- Installation #14:Pipeline trench from end of Construction Spread 2 to Backus pump station, Hubbard, Cass & Wadena Counties (41.5 miles) – 23,921,037 gallons
- Installation #15: Backus pump station, Cass County (0.10 miles) – 45,000,000 gallons
- Installation #16: Pipeline trench from Backus pump station to end of Construction Spread 3, Cass & Crow Wing Counties (31.3 miles) – 19,251,396 gallons
- Installation #17: Pipeline trench from end of Construction Spread 3 to Swatara pump station, Cass & Aitkin Counties (6.9 miles) – 11,475,494 gallons
- Installation #18: Swatara pump station, Aitkin County (0.10 miles) – 30,000,000 gallons
- Installation #19: Pipeline trench from Swatara pump station to end of Construction Spread 4, Aitkin & St. Louis Counties (37.5 miles) – 105,766,839 gallons
- Installation #20: Pipeline trench from end of Construction Spread 4 to North Gowan pump station, St. Louis County (9.6 miles) – 38,895,327 gallons
- Installation #21: North Gowan pump station, St. Louis County (0.10 miles) – 21,000,000 gallons
- Installation #22: Pipeline trench from North Gowan pump station to Minnesota/Wisconsin border, St. Louis & Carlton Counties (34.1 miles) – 56,033,241 gallons

14. Enbridge proposes to reuse water from construction dewatering for dust suppression and for invasive species control under Enbridge's Invasive and Noxious Species Management Plan, which is part of the EPP.

15. The total appropriation requested is 510.5 million gallons of groundwater per year for construction dewatering activities associated with the pipeline construction. The Application requests 348,540,810 gallons of groundwater for 14 construction spreads and 162,000,000 gallons of groundwater for eight pump station facilities. The approved pumping rate for the construction dewatering spreads is up to 800 gallons per minute (range 400 gpm to 800 gpm); and the approved pumping rate at other locations such as road bores, utility crossings, and valve excavations is 1,500 gallons per minute. Water removed from the construction trench will not be directly discharged to a surface water. Water will be discharged from the construction trench into a geotextile fabric and/or filter bag and then out into a well vegetated upland area in accordance with the EPP, unless in the case of pump stations, where the water will be discharged

into an on-site storm water pond. In accordance with the EPP, if the storm water pond is not prepared at the time of construction, the pump station discharges will be released into a geotextile fabric and/or filter bag surrounded by a straw bale or hay bale structure and released into a well-vegetated upland area in accordance to the EPP.

16. The Application 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, construction dewatering and 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.

17. 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 entities during the application and evaluation process.

18. The Application proposes an appropriation of up to 510.5 million gallons of groundwater to dewater the construction trench along the entire pipeline corridor. 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 portable pumps and discharging the water from the trench into a geotextile filter bag in a well-vegetated upland location or, when uplands are not accessible, into a straw or hay bale dewatering structure. On average, construction dewatering will occur over a period of three days or less, except where special construction techniques will occur, such as tie-ins, road bores, horizontal direction drills ("HDD") or mainline valve installations. For pump station facilities, the water will be discharged into a storm water pond whenever feasible. If the storm water pond has not been stabilized or is not operable, water will be discharged to a filtering device such as a geotextile filter bag in a well-vegetated upland area. Discharge of water used for buoyancy control would be regulated by a federal NPDES/SDS Permit. Information on site-specific characteristics on discharge and dewatering structures can be found in Attachment B, Section 5.1 of the EPP. *See* Application, Supplemental Information, Section 6.2 and Attachment B, Section 5.1 of the EPP.

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 electronic email newsletter notices informing recipients of the Application and notifying them of its availability on the permitting website.

20. The DNR requested comments on the permit application through the GovDelivery email newsletter from thirteen local soil and water conservation districts ("SWCD"), 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 USCOE, Board of Water and Soil Resources (BWSR), MPCA, Minnesota Department of Health (MDH), and Minnesota Department of Agriculture (MDA). *See* Minn. Stat. § 103G.301, subd. 7.

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 were received by tribal governments and will be 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 (revised 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 2018-3420 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 17, 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 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 Responses.

28. Comments were received from Honor the Earth during the public comment period from March 18, 2019, to May 17, 2019.

a. Honor the Earth has commented, "If the company is found to be in violation of permitted amounts, how will enforcement be handled?" ***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 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.

b. Honor the Earth has commented on a reference made to the draft Environmental Monitoring Control Plan (EMCP). "Where is this document?" "Where is the decision making matrix outlined?" and "How is "well-vegetated" and conducive conditions defined?" ***DNR response***: The EMCP is a requirement of the PUC as a condition of the route permit. Restoration of the construction areas and the need to reestablish vegetation will be addressed in other regulatory processes, such as the route permit, the license to cross state lands and the USCOE Clean Water Act section 404 permit and the MPCA Clean Water Act section 401 water quality certificate for wetland areas. Revegetation of disturbed areas is not subject to regulation under this water appropriation.

iii. Internal Review Topics and DNR Considerations.

29. As part of the DNR review of the Application, the following topics were identified as issued that needed to be addressed.

a. Groundwater appropriations for dewatering will be from surficial aquifers, and all discharges will be to upland sites, with appropriate best management practices ("BMPs"). DNR staff identified a need to ensure discharges from dewatering activities would not cause erosion or other environmental impacts. ***DNR consideration:*** Enbridge will be required to monitor all discharges under relevant MPCA permits and the EPP. All water appropriated will be groundwater. Except for the reuse activities approved herein, all groundwater will be discharged at well-vegetated upland locations or on-site storm water ponds at pumping stations. Enbridge will maintain logs of the daily water volume use totals for each water source and will provide logs to the DNR. The volumes will be recorded using a timing device in the trenches and flow meters at pump stations as per a condition of the Permit. Per the Environmental Monitor Control Plan (EMCP), Enbridge and the relevant agencies will have environmental inspectors on site to monitor all construction dewatering activities. The inspectors will inspect the work areas and ensure that all permit conditions and activities listed in the relevant plans are being followed. All disturbed areas along the dewatering locations and discharge locations will be reseeded if needed according to Appendix C of the EPP. Final restoration and monitoring activities would occur until final stabilization is achieved at each construction dewatering site, as regulated by a Clean Water Act 401

Construction Stormwater general permit and Stormwater Pollution Prevention Plan (SWPPP), under review by MPCA.

b. Natural Heritage Information System ("NHIS") plan needs to be part of the application for the water appropriations permits for construction dewatering locations. ***DNR consideration:*** Enbridge will submit all plans to the DNR Area Hydrologist for the Permit. The NHIS review was not complete at the time of the public comment period but that review has since been completed. DNR review and acceptance of the NHIS review did not identify any specific measures that Enbridge needed to address in the construction dewatering water appropriation. The NHIS review recommended limiting pumping noise near colonial bird nesting locations. There is only one known colonial bird nesting location along the pipeline corridor near Daggett Brook. Enbridge will double insulate pumps for sound reduction.

c. Site-specific plans are needed for the pump station facilities and discharges from those areas during construction. ***DNR consideration:*** The Application states that all pump station facilities will discharge water into a storm water pond on site or if not available, discharge into a filter device such as a filter bag in a well-vegetated upland area. No direct discharges will occur at upland or wetland locations for pump station facilities.

d. There are calcareous fens along the pipeline corridor, these areas must be reviewed for possible impacts. ***DNR consideration:*** The Application was sent to the DNR Wetland Specialist and reviewed with DNR groundwater technical staff. All fens near the vicinity of the pipeline have been reviewed. DNR has separately issued findings of fact, conclusions of law, and an order concluding the pipeline construction and operation will not affect nearby calcareous fens, with the exception of the Gully 30 calcareous fen. This order approves some alteration to the Gully 30 calcareous fen in compliance with an approved calcareous fen management plan.

IV. ANALYSIS OF STATUTORY AND REGULATORY REQUIREMENTS

30. 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

31. 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, applications for the appropriation of groundwater must include the information required by Minn. Stat. § 103G.287, subd. 1(a).

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

33. 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(b). Dewatering of the construction trench is needed to allow for safe working conditions and safe installation of the pipes. Open trenches can fill will water from surficial groundwater and/or precipitation. Dewatering of the trench is not anticipated to change the water and land resources as the water removed from the trench will be allowed to infiltrate into the surrounding groundwater. Unavoidable detrimental effects of the dewatering are minimal as the water will be allowed to infiltrate back into the groundwater. There are no alternatives to dewatering the trench because not dewatering would result in a major safety issue. Enbridge will employ conservation measures such as discharging water into a filtration bag to lessen sediment flowing out on to the ground surface and minimizing the amount of water pumped from the trenches to only that needed to complete the pipeline installation.

34. Enbridge properly submitted an application for the appropriation of groundwater for trench construction dewatering. All 22 water appropriation locations for construction dewatering will be considered under the Permit. *See* Minn. R. 6115.0660, subp. 1. Though Enbridge did not submit separate applications for each aquifer from which groundwater is proposed to be appropriated, Enbridge complied with Minn. R. 6115.0660, subp. 1 by submitting all information for each of the 22 water appropriation locations that would be required in separate applications. All 22 water appropriation locations are requested under the Application and any decision on this Application will address all 22 locations. *See* Minn. R. 6115.0660, subp. 1.

35. As required by Minn. R. 6115.0660, subp. 2., the applicant has demonstrated evidence of ownership or a license to use the land overlying the groundwater source from which water will be appropriated. The Application states that Enbridge will obtain landowner approval for water appropriation activities within the construction workspace as part of the landowner easement negotiations process prior to construction and prior to a decision by MNDNR on the application for a License to Cross Public lands. As of the time of the October 2020 submittal of

the application, 100% of private landowners had completed the easement negotiations with Enbridge. Enbridge submitted an affidavit certifying that it has ownership or control of, or a license to use, the land overlaying the groundwater source or abutting the surface water sources form which water will be appropriated, as required by Minn. R. 6115.0660.

36. 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 area of proposed water use, the location of the proposed points of appropriations, 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). Although the appropriation is for groundwater, the construction dewatering will be taking the surficial groundwater from the trench. It is not for deeper water appropriations. Thus Minn. R. 6115.0660 subp. 3(C)(4) is waived.

37. As required by Minn. Stat. § 103G.287, subd. 1(a)(1), (4) and Minn. R. 6115.0660, subp. 3(H), the Application does not contain detailed information regarding the hydrogeology and hydrology or hydrologic studies of the aquifers that will form the source of water for the requested appropriation. The project did not provide aquifer testing or test hole logs as the project is not long term and is not appropriating from deeper aquifers. All water being removed is from the trench during the construction of the pipeline is surficial water (8 feet deep). The DNR waived the requirements of this statute and rule as the water appropriations will be from surficial aquifers and will be temporary in time and will have limited impacts to hydrology. *See* Minn. Stat. § 103G.287, subd. 1(5)(b).

38. 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 shows that the appropriation will take place by dewatering groundwater from the construction trench and pump station facilities by use of pumps. Based on the 2009-2010 Alberta Clipper pipeline installation (which 41% of the proposed pipeline is co-located with), the Application detailed what the dewatering monitoring data showed for the Alberta Clipper pipeline, in addition to the depth of excavation and depth of groundwater based on surface conditions. Based on the dewatering data for the Alberta Clipper project, the Application conservatively estimated that 80 to 100 percent of the trench volume will need to be dewatered and added in 25 to 50 percent contingency to account for weather conditions. Enbridge's total appropriation request of 510.5 million gallons for the Project is extrapolated from the Alberta Clipper data, taking into account the additional mileage, additional pump stations, and the contingencies for the Project. This methodology provides a reasonable

approximation of the volume of water that may need to be appropriated. Pumping rates for construction dewatering of the trench will be between 400 gallons per minute up to a maximum of 800 gallons per minute for each pump. When traditional dewatering techniques cannot be done, such as at road bore excavations a well-point system will be utilized and pumping rates will be 1,500 gallons per minute with portable pumps. The well-point system will be used in about 20% of the route for specialized areas. Well-point systems are a series of small diameter wells that are connected to a header pipe to a well-point pump. The depth of the well-point system will vary but will not be deeper than nine feet deep. Because these small diameter wells are used for temporary dewatering of groundwater for non-potable use during construction, and are located at a depth of 25 feet or less, they do not meet the statutory definition of "well" and are exempted from the requirements of section 103I. *See* Minn. Stat. § 103I.005, subd. 21(1). The pump then can draw up water from the ground and dewater a location faster than traditional pumping techniques. Traditional dewatering techniques will be used in 80% of the construction dewatering. Enbridge will use timing devices on all construction trench dewatering and flow meters at all pump station facilities as per a condition on the Permit. To be consistent with the NPDES/SDS permit under review by the MPCA, appropriation and discharges for well-point systems will be limited to a maximum of 1,500 gallons per minutes (avg. 1,200 gallons per minute).

39. As required by Minn. Stat. § 103G.287, subd. 1(a)(3), the Application contains information on groundwater reuse, and it is anticipated that no water treatment will be necessary for any proposed reuse of water. The Application states that some groundwater will be reused for buoyancy control volumes. Buoyancy control is needed during push-pull installation of pipeline segments in inundated wetlands (there are 41 of these sites, public water wetlands and non-public water wetlands). The push-pull method is described in Section 3.7.1 of the EPP and Figures 35 & 36 of the EPP. The push-pull technique is a feasible method to cross saturated wetlands with greater than 12 inches of inundation and peat soils. Water treatment is not needed prior to reuse for the push-pull technique as water from the wetlands will be used inside the pipe to submerge the pipe into the bed of the wetland and the water does not need to be treated for buoyancy control. The Application also states that some of the groundwater from the pump station facilities could be used for dust suppression activities. The reuse would be dependent upon availability and proximity of water related to where dust suppression is needed. Water may also be reused to support decontamination of equipment for invasive and noxious species control. Water treatment is not needed for dust suppression activities as the water does not have to be clean or treated to control dust from construction activities or treated to spray down equipment for invasive and noxious species. *See* Application, Supplemental Information, Section 2.2.1 and Table 2.2-1.

40. 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 states that dewatering is necessary to facilitate the installation of the pipe at road bores, waterbody crossings and associated facilities that require deeper excavation such as mainline valves, cathodic protection systems and pump stations. Dewatering of the excavated trench also is required to provide visibility of the trench bottom to ensure that there is nothing in the trench that could compromise the integrity of the pipe (i.e. rocks). *See* Application, Supplemental Information, Section 2.2.2.

41. 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 except for storm water ponds installed at the pump station facilities (only for dewatering at pump station facilities). All water will be discharged into a well-vegetated upland location using a filter bag, or if there is not a suitable upland location, a straw or hay bale dewatering structure. Enbridge also explained that, subject to DNR approval, it may reuse water pumped from the pipeline trench for buoyancy control volumes. Buoyancy control is needed during push-pull installation of pipeline segments in inundated wetlands (there are 54 of these locations, made up of public waters wetlands and non-public waters wetlands). Enbridge proposes that reuse, if approved, may also occur at the pump station facilities for dust suppression activities, but the reuse would be dependent upon availability and proximity of water related to where the dust suppression is needed. Enbridge also proposes to reuse groundwater from the trench to support decontamination of equipment for invasive and noxious species. *See* Application, Supplemental Information, Section 2.2.1 and Table 2.2-1.

42. 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 available to the DNR is adequate to determine whether the proposed appropriation volume and use of water is sustainable and protective of ecosystems, water quality, and the ability of future generations to meet their own needs.

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

43. 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.

44. 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 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. Environmental impacts are not expected as the water appropriation is from trench dewatering at eight feet deep and will only remove water that accumulates in the trench (i.e. precipitation and surficial groundwater). Enbridge is required to record and report all water removed from the trench to the appropriate agencies. All water removed from the trench will be allowed to soak back into the surrounding ground, infiltrating back into the surficial groundwater. Monitoring requirements are related to volumes of water removed from the trench during construction. Enbridge will maintain logs of daily use totals at each water source and will provide logs for periodic reporting as required by applicable agencies. The volume of water pumped will be monitored using a timing device in the construction dewatering trenches and flow meters at pump station facility dewatering locations as approved by condition of the Permit. Per the Environmental Monitor Control Plan, Enbridge and the relevant agencies will have Environmental Inspectors (EIs) on site to monitor all construction dewatering activities. The EIs will inspect the work areas and ensure that all permit conditions and activities listed in the relevant plans are being followed. All disturbed areas along the dewatering locations and discharge locations will be reseeded if needed according to Section 7.0 and Appendix C of the EPP. Final restoration and monitoring activities will occur until final stabilization is achieved at each construction dewatering site, as would be required by a Clean Water Act Section 401 Construction Stormwater general permit and SWPPP, under review by MPCA.

45. 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, 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. All water removed from the trench for construction of the pipeline will be taken from surficial aquifers and not deep confined aquifers.

46. 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 details the

temporary impacts during the pipeline construction dewatering and alternative options not selected. After review, the DNR concludes that the evidence in the Application materials in the record shows that the anticipated changes to the resource will be temporary in nature because dewatering typically occurs in a period of three days or less. The water will be pumped out of the trench and into a filtering device such as a geotextile filter bag discharging into a well-vegetated upland area or when uplands are not accessible either because of site conditions and/or distance, to a straw or hay bale dewatering structure which will allow infiltration back into the ground near the site or reused if quantities are available. All pump station dewatering will be discharged into a storm water pond located on site or, if one is not on site, discharged into a filtering device such as a geotextile filter bag for eventual discharge into a well-vegetated upland area. There are no alternatives to construction dewatering. Without construction dewatering, there would be a significant safety issue as working in the wet trench can cause slips, falls, and collapsing of the trench.

47. 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 a requirement that Enbridge obtain and maintain all additional permitting requirements imposed by applicable federal, state, or local law. The Permit is further conditioned upon Enbridge having "all required discharge authorizations from local, state, or federal government units." The DNR did not receive any comments from local, state or federal government units on the proposed water appropriation for construction dewatering, but to the best of DNR's knowledge, 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.

48. 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 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 impacts in groundwater resources and the Application includes measures to minimize physical damage to the ecosystem through the use of BMPs and monitoring provisions.

49. 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." Any appropriation of water under the Permit is conditioned upon Enbridge

having all required discharge authorizations. Discharge quality must meet applicable effluent limits and surface water quality standards, and violations of such requirements are subject to the regulatory jurisdiction of the MPCA. All water removed from the trenches during construction will be allowed to infiltrate back into the surficial groundwater aquifer after discharges into the geotextile filter bag, except for water placed in storm water ponds at pump stations. No water will be transported off site unless it is reused for buoyancy control, dust suppression activities, or decontamination of equipment for invasive and noxious species. Water will be discharged immediately from the trenches and allowed to infiltrate back into the aquifer in the surrounding areas. DNR does not anticipate that the quantity, quality or timing of the waters returned after use (infiltration) will have any impacts on any receiving waters as the water discharge from the trenches will be filtered through a geo-textile filter bag and discharged into a well-vegetated upland area away from surface waters.

50. 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 from the pipeline trench and pump station facilities to support fugitive dust suppression activities as noted in the Application and additionally stats 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 as Appendix B of Enbridge's EPP. The Application notes that water may also be reused for buoyancy control purposes**.** If the water is not reused, it will be discharged per the BMP's in the EPP.

51. 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 from local, state or federal agencies on the Application. No comments received from private persons directly relate to the Application. Internal DNR comments and comments from tribal governments are discussed above.

52. 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.

53. 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 analysis in its consideration of the Application.

54. 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).

55. 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.

56. Minn. R. 6115.0670, subps. 2(D)(1), (2), (4), and (5): These rules require 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." The Application proposes to use portable pumps at a depth of eight feet deep. It is proposed that the groundwater will be pumped from the surficial aquifer at rates up to 800 gallons per minute on the trench, up to 1,500 gallons per minute at specialized locations such as valve sites. DNR has considered the above factors in evaluating the proposed appropriation and determined that water appropriated at the 22 sites is surficial water and the excavation where the water appropriation will be occurring is not deep enough to where it would penetrate confined aquifers. The proposed appropriation will not have long-term effects on water levels in the surficial aquifer.

57. Minn. R. 6115.0670, subps. 2(D)(3) and (6): These rules require the DNR to consider the "area of influence of the proposed well(s)" and "probable interference with neighboring wells." Based on the information provided in the Application, the depth of the trench is eight feet deep and the pumping will be appropriating surficial groundwater. There is expected to be no impact to wells along the pipeline corridor as the proposed depth of the trench should not impact any confined aquifers, where domestic and municipal water supplies are usually located. Most wells are set deeper than the proposed dewatering trench and the pipeline corridor is generally not located close to communities or private homes.

58. 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.

59. 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.

60. An 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). Enbridge has demonstrated that there is a need to dewater the trench for pipeline construction to help facilitate safe working conditions for Enbridge and reduce the risk for impacts that could rupture the pipeline such as rocks. 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 (Alberta Clipper) and is a practical method for ensuring the safety of the Enbridge employees and pipeline integrity.

61. An 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). Enbridge has provided diagrams related to the discharge for the trench dewatering. The discharge locations associated with the pipeline trench dewatering are within the same general area as the appropriation locations. There will be no direct discharges to surface waters from the groundwater dewatering activities with the exception of water that is reused for buoyancy control. The Application states that all groundwater will be infiltrated back to the groundwater source except for any water that is reused. See Section 5.1 of the EPP and Attachment C and D from the Application, Supplemental Information for the site-specific information on discharge and dewatering locations. The water will be discharged from the trench into a filter bag or other dewatering structure which will allow water to infiltrate back into the ground. Buoyancy control water would be discharged in compliance with an NPDES/SDS permit for the Project.

62. 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).

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

E. Consideration of Factors in Minn. R. 6115.0750 and 6115.0770.

64. The Application is for a temporary, one-time appropriation of groundwater, for not more than 12 months. *See* Minn. R. 6115.0750, subp. 2.

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

66. Enbridge will instrument each installation for appropriating water with a flow meter or timing device on trench pumps and flow meters at pump stations to measure the quantity of water appropriated within ten percent of the actual amount of withdrawal. *See* Minn. R. 6115.0750, subp. 3(B).

67. Enbridge will be required to monitor water volumes at each spread. *See* Minn. R. 6115.0750, subp. 3(C).

68. Enbridge 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.

69. Enbridge 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 and the water appropriated will be allowed to infiltrate following its discharge. 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.

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

70. Minn. Stat. § 103G.287, subd. 2 provides that "groundwater appropriations that will have negative impacts to surface waters are subject to the applicable provisions in section 103G.285." The DNR has analyzed the potential impacts of the proposed groundwater appropriation on surface waters. Negative impacts to surface waters resulting from the proposed appropriation are not anticipated. The water removed will be surficial groundwater from the trench. All water removed from the trench will be allowed to infiltrate back into the ground or be reused in other activities such as push-pull pipeline buoyancy, dust suppression or decontamination for invasive species. Impacts will be temporary in nature.

71. Under Minn. Stat. § 103G.287, subd. 3, the DNR is authorized to establish water appropriation limits to protect groundwater resources. In establishing such limits, the DNR must "consider the sustainability of the groundwater resource, including the current and projected water levels, water quality, whether the use protects ecosystems, and the ability of future generations to meet their own needs." DNR has concluded that protection limits are not necessary because the Project only involves a temporary appropriation from surficial and not confined aquifers. Ecosystems will be protected as Enbridge will only be temporarily pumping the water that fills in the construction trench, water will be discharged into a nearby well vegetated location and allowed to infiltrate back into the groundwater.

72. Under Minn. Stat. § 103G.287, subd. 4(a), the commissioner may designate groundwater management areas and limit total annual water appropriations and uses within a designated area to ensure sustainable use of groundwater that protects ecosystems, water quality, and the ability of future generations to meet their own needs. Water appropriations and uses within a designated management area must be consistent with a groundwater management area plan approved by the commissioner that addresses water conservation requirements and water allocation priorities established in section 103G.261. The Application will be dewatering the construction trench through the Straight River Groundwater Management area. The Straight River Groundwater Management Area Plan limits appropriations from confined aquifers; the Application only proposes appropriations from surficial aquifers and is therefore consistent with the plan.

73. 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 . . . ." Based upon the Application, DNR has determined that the proposed groundwater appropriations are sustainable to supply the needs of future generations. The appropriation of groundwater, under the conditions set forth in the Application will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supplies and private domestic wells as the appropriation will be temporary and will only remove surficial groundwater from a small area for the construction of the pipeline and pump station facilities. Further, except for water that is reused, water will be returned (infiltrated) back to the groundwater source.

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

G. The Proposed Appropriation Satisfies Minn. Stat. § 103G.293.

75. 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.

H. The Proposed Appropriation Satisfies Minn. R. 6115.0670, subp. 3.

76. 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 Application, the proposed appropriation is reasonable, practical, and will adequately protect public safety and promote the public welfare. Minn. R. 6115.0670, subp. 3(A)(3). 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).

77. Minn. R. 6115.0670, subp. 3(B) applies to approvals of a "surface water appropriation application." This subpart is inapplicable as the proposed appropriation is for groundwater only.

78. As required by Minn. R. 6115.0670, subp. 3(C)(1), the amounts and timing of the proposed appropriation is limited to the safe yield of the aquifer to the maximum extent feasible and practical. This subpart is inapplicable as the proposed appropriation is from surficial groundwater and not confined aquifers.

79. 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).

80. 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).

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

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

82. Minnesota Statutes § 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.

83. In a separate findings of fact, conclusions and order, DNR has approved Enbridge's request for no effect concurrence for several calcareous fens located near the pipeline route, including the Chester 24 calcareous fen. The approved CFMP includes a condition requiring monitoring of water levels in piezometers near the Chester 24 fen. DNR staff are confident that the volume, duration and location of the dewatering will not impact the Chester 24 fen, but want to obtain additional information 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. If monitoring indicates that water levels have not returned to pre-construction levels as a result of the Project, a Calcareous Fen Management Plan will be required for the Chester 24 fen that includes additional monitoring and required corrective procedures. The Permit is consistent with Minn. Stat. § 103G.223 because DNR does not anticipate any reduction in groundwater resources at the Chester 24 fen, and in the unlikely event that impacts would occur, any reduction in groundwater resources would be temporary.

J. The Proposed Appropriation Satisfies Minn. Stat. § 103G.801.

84. All appropriations located with 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 all water from 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.

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

85. 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.

86. "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.

87. 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 groundwater, 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.

88. As detailed herein, the proposed appropriation under the Application, subject to the conditions of the water appropriation 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.

89. The potential effects on natural resources resulting from the Project and project alternatives were comprehensively analyzed within the Application. Enbridge will monitor and report the volume of water removed along the pipeline corridor to the DNR as part of the Permit.

90. 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 and the requirements of an NPDES/SDS permit under the regulatory authority of the MPCA. Wetland mitigation for unavoidable wetland impacts will be required under an approved wetland replacement plan and under a federal wetlands permit issued by the USCOE. Wetland monitoring will be required under these state and federal wetlands requirements. Water quality monitoring for discharges will be required by the MPCA.

91. 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.

92. 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, .0670 and .0710 not discussed herein is waived as unnecessary or inapplicable. *See* Minn. R. 6115.0660, subp. 4; Minn. R. 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. When appropriated in accordance with these requirements, and in compliance with the conditions of the permit, the proposed appropriations 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 reuse of groundwater to support: (1) buoyancy control in the push-pull installation process; (2) the fugitive dust suppression activities described in water appropriation permit no 2018-3421; and (3) the decontamination of equipment described in Enbridge's Invasive and Noxious Species Management Plan is approved.

14. Enbridge has shown that there is a reasonable necessity for dewatering and that its dewatering proposals are practical. Minn. R. 6115.0710(A). The proposed dewatering will be temporary. Enbridge has shown that the excess water can be discharged without adversely affecting the public interest, receiving waters or groundwater. Minn. R. 6115.0710(B). The proposed dewatering, in accordance with the conditions contained therein is not prohibited by any existing law. *See* Minn. R. 6115.0710(C).

15. 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. Minn. Stat. § 103G.315, subds. 3, 6(a).

16. 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).

17. 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.

18. 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 Minnesota Statutes § 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 2018-3420 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 Minnesota Statute § 103G.311, subd. 5 and Minnesota Rule 6115.0670, subp. 3, within 30 days after mailing or electronic transmission of notice of this Order.

DNR Authorized Signature ***wet or e-signature***:

//Steven Colvin Digitally signed by Steven Colvin Date: 2020.11.12 07:38:27 -06'00'//

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