

**ENBRIDGE LINE 3  
REPLACEMENT PROJECT  
Public Waters Works Permit  
No. 2018-3419**

**(Wetland Crossings)**

**FINDINGS OF FACT, CONCLUSIONS  
AND ORDER**

Work in Public Waters Permit No. 2018-3419

Enbridge Line 3 Replacement Project

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

## MINNESOTA DEPARTMENT OF NATURAL RESOURCES

**In the Matter of the Application for  
Public Waters Work Permit No. 2018-3419**

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

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After review of the application, due investigation of relevant information, and consideration of comments, and based on the information and statements contained in the permit 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, 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.245, Enbridge applied for a work in public waters permit as part of its proposed Line 3 Replacement Pipeline Project ("Project"; the term "project" is used to refer to the bridge replacement component of the overall Project). The application seeks approval for construction and installation of a pipeline through public waters wetlands on private property. These Findings of Fact only address Enbridge's Work in Public Waters Permit Application 2018-3419 (the "Application"), which relates to proposed work in public waters wetlands on private land. Other permit applications will be addressed in separate findings.

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

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

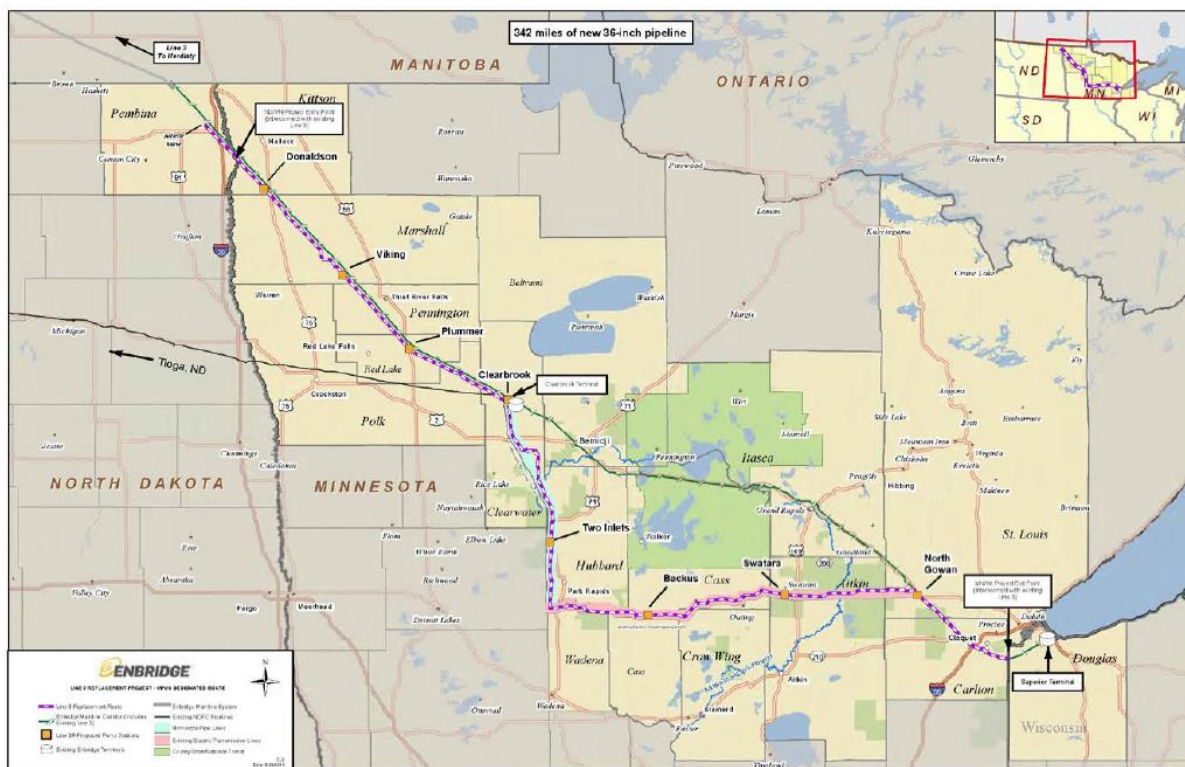
3. The Project has undergone significant review from the Public Utilities Commission (“PUC”). On April 24, 2015, Enbridge filed separate applications for a certificate of need (“CN”) and routing permit (“RP”) for the Project. The PUC authorized the Department of Commerce, Energy Environmental Review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

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

5. The permit Enbridge seeks in this proceeding relates solely to pipeline installation in public waters wetlands on private land (the “Permit”). A multitude of other permits and regulatory requirements will also apply to the Project prior to construction. Required authorizations from DNR include four separate water appropriation permits, another public waters work permit for a bridge crossing over the Willow River in Aitkin County, 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. The Project would also cross wetland and stream areas not covered by DNR licenses or permits. These wetland and stream crossings are regulated by the Army Corps of Engineers (“USCOE”) Clean Water Act section 404 permit and the Minnesota Pollution Control Agency (“MPCA”) Clean Water Act section 401 water quality certification.

## II. ENVIRONMENTAL SETTING OF THE PROJECT

6. As shown below, the proposed Project transects thirteen Minnesota counties: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Aikin, St. Louis, Crow Wing, and Carlton counties. The Project proposes to maintain a 50-foot wide permanent corridor along the pipeline route. During construction, the Project proposes to temporarily widen the corridor to 120-foot wide in uplands and 95-foot wide in wetlands. The pipeline route also includes additional temporary construction workspaces.



7. The Project proposes 72 public waters 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 waters crossings in public waters wetlands located within private lands, all public waters 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) because the vegetation removal is incidental to a horizontal directional drilling (“HDD”) crossing authorized under the Utility License to Cross Public Waters. The remaining five public waters wetland crossings located on private lands are addressed in these findings.

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

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

#### **A. Enbridge Submits Application to DNR for Public Waters Work Permit-Public Waters Wetlands**

9. Enbridge proposes to excavate and fill in five public waters wetlands for the purpose of pipeline construction. Because the construction involves fill and excavation and will involve changing the course, current or cross-section of public waters, a DNR Public Waters Work Permit is required. *See* Minn. Stat. § 103G.245, subd. 1.

10. On September 13, 2018, Enbridge submitted an Individual Public Waters Work Permit Application – Roadway/Pathway Fill (temporary) and Soil Removal to the DNR. Enbridge submitted a \$1,000 check covering the permitting fee in conjunction with the Application and in accordance with the administrative rule. The Application was assigned permit application no. 2018-3419.

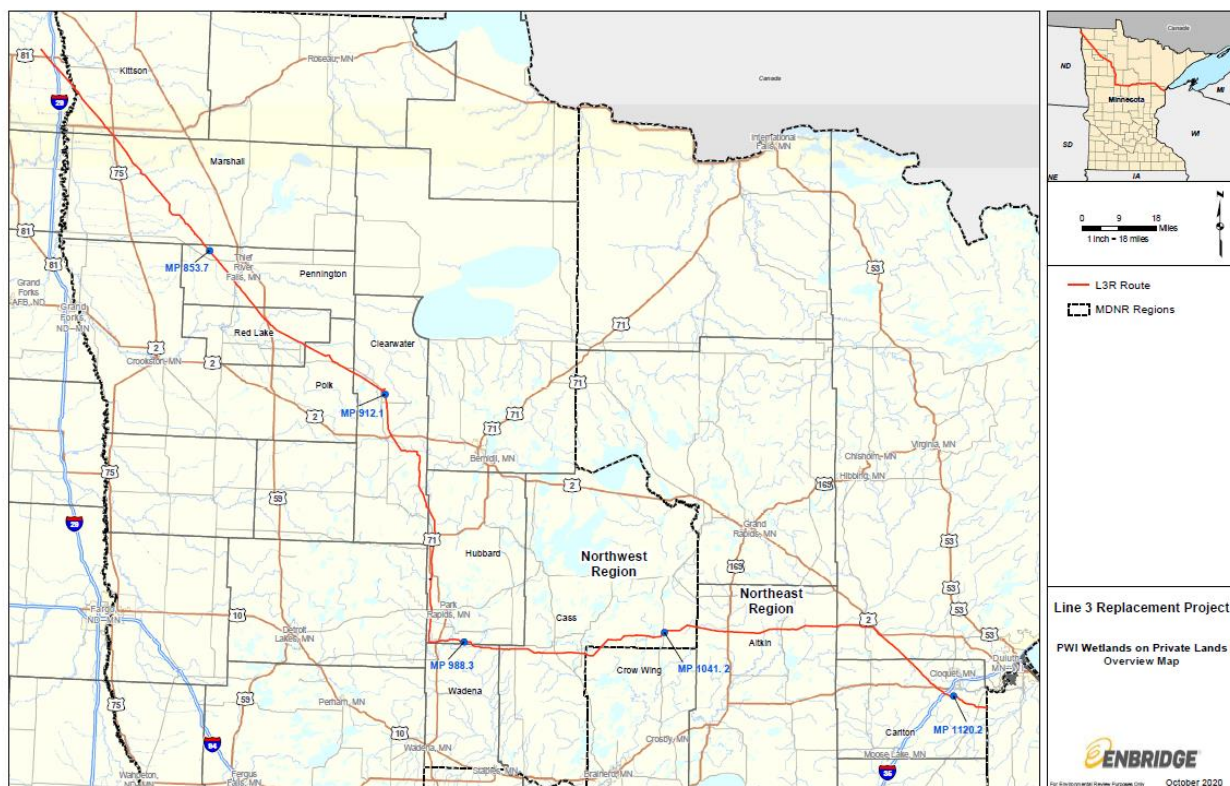
11. The Application included a description of the project, a statement of the overall project purpose and need and a specific request for individual crossings, along with supporting figures, photographs and technical information.

12. On December 20, 2019, after receiving comments on its initial application, Enbridge submitted a revised permit application that included some changes, such as removing a public waters wetland (Public Waters Inventory (PWI) #29-055400) located at milepost 963.7 and replacing it with public waters wetland (PWI #09-014900) located at milepost 1120.1. DNR and Enbridge had many discussions between December 2019 and October 2020 on the Application. On October 16, 2020, Enbridge submitted a revised application; that had minor revisions. On November 8, 2020 Enbridge resubmitted the same October 16, 2020 application with the relevant plans such as the EPP (including attachments), the Winter Construction Plan, the Post-Construction Wetland and Waterbody Monitoring Plan (PCMP) and the Natural Heritage Information Systems Review and Avoidance plan (NHIS) dated October 13, 2020, this submittal is considered the final application (“Application”). DNR’s decision on Work in Public Waters Permit 2018-3419 (the “Permit”) is based on the November 8, 2020 submittal of the

application and plans. . The EPP includes wetland and waterbody construction procedures, invasive species management and restoration procedures.

13. The following five individual project sites were included within the Application. Four of the five sites will involve crossing the public waters wetland with conventional pipeline techniques, including trenching, spoil storage, placement of the pipeline and replacing soils over the installed pipeline. Only Unnamed Wetland (PWI #15-044100) will involve placement of mats in the wetland and no excavation.

- Unnamed Wetland (PWI #57-000300) at milepost 853.7 (Pennington County)
- Unnamed Wetland (PWI #15-044100) at milepost 912.1 (Clearwater County)
- Frandsen Slough (PWI #29-032300) at milepost 988.3 (Hubbard County)
- Scout Camp Pond (PWI #11-072900) at milepost 1041.2 (Cass County)
- Unnamed Wetland (PWI #09-014900) at milepost 1120.2 (Carlton County)



14. Minn. Stat. § 103G.301, subd. 6 and Minn. R. 6115.0240, subp. 3(E) require an applicant to serve copies of the application and supporting materials on the mayor of the city, secretary of the board of supervisors of the soil and water conservation district, or the secretary of the board of managers of the watershed district if the proposed project is within or affects a watershed district or soil and water conservation district or city. This requirement was waived because MPARS, the DNR online permitting and reporting system, automatically sends



electronic notification and permitting documents to the appropriate entities during the application evaluation process.

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

15. 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 comment period, which closed on May 17, 2019. The September 13, 2018 version of the Application was among the application materials posted for public comment. The DNR published a GovDelivery (email newsletter) notice and press release notifying the public of the open comment period. Prior to the public comment period, the DNR issued GovDelivery notices informing recipients of the Application and notifying them of its availability on the permitting website.

16. The DNR requested comments on the 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 United States Army Corps of Engineers (USCOE), Board of Water and Soil Resources (BWSR), Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDH), and Minnesota Department of Agriculture (MDA). *See* Minn. Stat. § 103G.301, subd. 7.

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

18. From March 22, 2019 through May 7, 2019 (original Application dated September 13, 2018), and from February 12, 2020 through March 12, 2020 (revised Application dated December 2019), the DNR requested internal comments.

19. 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](#).

20. 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.

21. 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.

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

#### **i. Comments by Red Cliff Band and DNR Responses.**

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

a. The Red Cliff Band stated “Miskwabekaang has no faith in Enbridge’s ability to adequately protect the environment or their ability to execute their Environmental Protection Plan given Enbridge’s history listed above.” ***DNR response:*** Enbridge is required to provide Independent Environmental Monitors (IEM) for determining permit compliance as condition of the PUC Route Permit. This condition requires the IEM to be under the control of and report to Department of Commerce, MDA, MPCA and the DNR. These monitors will track Project compliance with permit conditions. Any non-compliance will be addressed by the appropriate regulatory agency. DNR agency staff will also perform spot check inspections to confirm compliance with DNR permit conditions.

b. The Red Cliff Band stated “Wetlands are extremely sensitive areas where construction and restoration can be very difficult. Should the MDNR approve this permit despite this concern, construction should be limited to when the ground is solidly frozen to minimize environmental harm.” ***DNR response:*** There are advantages and disadvantages to winter construction. For example, with winter construction it takes a longer time for vegetation to be reestablished. Winter construction also results in frozen soils placed back into the trenches to be mounded up, which can back up water and create a damming effect in the wetlands. On the other hand, winter construction can minimize soil compaction and introduction of invasive species. Although winter time construction can have some benefits, the DNR has determined that limiting construction to winter time for these wetlands is not needed to ensure proper restoration. The permit requires restoration of wetlands to pre-



existing conditions as well as post-construction monitoring to ensure restoration success. Two the wetlands are also subject to advanced post-construction monitoring of vegetation to ensure no indirect impacts occur within these wetlands.

**ii. Comments from the 1855 Treaty Authority and DNR Response.**

24. Comments were received from the 1855 Treaty Authority during the public comment period from March 18, 2019, to May 7, 2019.

a. The 1855 Treaty Authority commented that, pursuant to Public Law 280, DNR lacks authority to issue the Permit without the consent of the Minnesota Chippewa Tribes. **DNR response:** Public Law 280 does not require DNR to obtain consent from tribal governments to issue permits outside of Indian country. For the purposes of PL 280, Indian country does not include ceded territory.

**iii. Comments by Honor the Earth and DNR Responses.**

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

a. Honor the Earth has commented on DNR comments on the USCOE draft section 404 permit regarding matting in the wetlands. Honor the Earth asked, “How do they expect wildlife to live under the mats they are driving on? In their descriptions of the waterway crossing, they indicated that in some conditions, mats would not be able to be removed. Where are they sourcing the timber for the mats? The revegetation process should be defined by state and tribal environmental agencies. How are they guaranteeing that there will be no permanent impacts? Permanent impacts can be seen across their existing corridor.” **DNR response:** It is expected that wildlife will not be living under matting while construction activities are taking place. These mats are laid on the ground and are used to access the corridor for pipeline construction. Wildlife can pass over them as they are flat timber mats. The source of the timber for the mats has no bearing on whether the Application meets the regulatory standard for permitting this activity. Matting is expected to be removed after final construction and grading is complete for the pipeline. No matting will be allowed to stay in place along the route. DNR has been in consultation with tribal agencies, BWSR, and MPCA to develop seed mixes and the revegetation process that has been incorporated into the Post-Construction Vegetation Management Plan for Public Lands and Waters (VMP) and the Post-Construction Wetland and Waterbody Monitoring Plan (PCMP) for reestablishment of vegetation along the pipeline corridor including wetlands. There will be impacts along the pipeline corridor, but the plans are in place to remedy

impacts through monitoring of vegetation and hydrology along the route and taking corrective action where necessary.

b. Honor the Earth has commented with respect to post construction monitoring of wetlands, “These monitoring and reporting activities should be done by a third-party, and paid for by Enbridge.” **DNR response:** Enbridge is required to provide Independent Environmental Monitors (IEM) for determining permit compliance as a condition of the PUC Route Permit. This condition requires the Independent Environmental Monitors (IEM) to be under the control of and report to Department of Commerce, MDA, MPCA and the DNR. These monitors will track Project compliance with permit conditions. Post construction monitoring will be conducted by Enbridge according to PCMP. 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.

#### iv. Comments by Friends of the Headwaters and DNR Responses.

26. Comments were received from Friends of the Headwaters during the public comment period from March 18, 2019 to May 7, 2019.

a. Friends of the Headwaters commented that the public trust doctrine precludes the DNR from issuing the Permit or any other approvals on the Project. **DNR response:** Friends of the Headwaters cites to no authority for the proposition that the public trust doctrine would preclude the issuance of a permit for work in public waters wetlands that may or may not be navigable waters. This proposition is especially doubtful considering that the Minnesota Supreme Court has recently declined to expand the public trust doctrine. *White Bear Lake Restoration Assoc. v. Minn. Dep’t of Natural Res.*, 946 N.W.2d 373, 386 (Minn. 2020).

b. Friends of the Headwaters commented that DNR must independently evaluate the route for the Permit. **DNR response:** The PUC, not the DNR has the authority to issue the pipeline routing permit for the Project pursuant to Minnesota Statutes section 216G.

c. Friends of the Headwaters argues that DNR cannot grant the Permit because it would interfere with hunting, fishing and gathering rights reserved by the Minnesota Chippewa tribes. **DNR response:** Friends of the Headwaters cites to no authority for this proposition. The Permit would not prevent the Chippewa tribes from hunting, fishing or gathering in areas crossed by the pipeline. Further, as described below in ¶¶ 78-79, the Project would not cause pollution, impairment or destruction that would

interfere with hunting, fishing or gathering. Additionally, the PUC's CN decision acknowledged that while the Project would traverse ceded territories where Minnesota's Ojibwe and Chippewa tribes hold usufructuary rights, denying the CN "would have disproportionate and serious effects on the Leech Lake reservation—as the Leech Lake Tribal Government clearly asserted to the Commission on multiple occasions through the process—because it would require continued disruptive maintenance of Existing Line 3 and increase the risk of an accidental oil spill on those lands." Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified (May 1, 2020) at 13.

d. Friends of the Headwaters argues that Enbridge did not incorporate DNR's recommendations into the EPP related to indirect wetland impacts. **DNR response:** The EPP has been revised significantly since this comment was received including improvements to vegetation clearing, aquatic and terrestrial invasive species management and post construction monitoring. These activities will help avoid indirect impacts to wetland and the monitoring will help identify if there are impacts that will require additional wetland restoration or mitigation.

e. Friends of the Headwaters' comments on the application of MPCA's wetland protection water quality standard, Minn. R. 7050.0186, are outside the jurisdiction of the DNR and the scope of the Permit.

**v. Internal Review Topics and DNR Considerations.**

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

a. Natural Heritage Information System (NHIS) plan needs to be part of the application for the work in public waters permit. **DNR consideration:** Enbridge will follow the recommendations set forth in the NHIS Review and Avoidance Plan from DNR. The NHIS Review and Avoidance Plan is part of the Application and thus a requirement of the permit. Enbridge will be required to follow the timing restrictions in public waters wetlands with sensitive species or rare and native plant communities as a condition of the permit. There are construction limitations from May 1 to July 31 at Unnamed Wetland (PWI #57-000300) at milepost 853.7 to avoid impacts to Minnesota species of special concern as well as fisheries exclusions dates for trout waters at Scout Camp Pond (PWI #11-072900) from September 1 to June 30 that are also a condition of the permit.

b. All work conducted in the public waters wetlands should be consistent with the final approved Vegetation Management Plan (VMP). This plan should be loaded as an attachment in the permit with a condition referencing this plan. **DNR consideration:** Enbridge will follow all relevant plans; all construction related plans are now part of the EPP. Enbridge has submitted the November 2020 Application, a revised EPP, the PCMP, the VMP, the Winter Construction Plan, and the NHIS Review and Avoidance Plan. The Permit contains a condition requiring that those plans are followed as agreed upon with all applicable agencies.

c. All public waters wetlands should be subject to the MPCA's Wetland and Waterbody Monitoring Plan or follow those conditions set by MPCA on wetlands. **DNR consideration:** Enbridge will be required to follow all relevant plans including the requirements set forth in the Post-Construction Wetland and Waterbody Monitoring Plan (PCMP). This plan has been developed as multi-agency requirement subject to the USCOE, MPCA and DNR regulatory authority. Compliance with this plan is a condition of the Permit.

d. Reseeding of the public waters wetlands should be done with a wetland rehabilitation seed mix 34-171 for quick cover in wet areas until native vegetation is able to reestablish. **DNR consideration:** Enbridge will follow the recommended seeding mixes and amounts agreed upon with all applicable agencies. All public waters wetlands will be reseeded with approved seed mix 34-171. The Permit requires revegetation using the agreed upon and appropriate Minnesota native seed mixes listed in Attachment C of the EPP.

e. How will fill be prevented from being spread throughout the public waters? Will silt curtains or other devices be utilized to prevent sediment from sloughing off into the public waters wetland? **DNR consideration:** The Permit requires that Enbridge install new clean matting in the public waters wetlands and that all equipment must be free of dirt, debris and invasive species (weeds/seeds) before being placed in the wetlands. The Permit allows the soil to be excavated from the wetlands and used for backfilling. Public water wetlands will be restored to their pre-existing elevations. No additional permanent fill, beyond what is need to restore the construction workspace, will be placed within public water wetlands.

f. Will the company provide site specific plans for each crossing? **DNR consideration:** Site specific plans are not being required for all of the wetlands. Site specific plans were prepared for the crossing of Scout Camp Pond as it is incorporated with the crossing of Spring Brook. Enbridge is required to follow the EPP, the PCMP

and VMP and restore the site to pre-construction conditions as a condition of the permit.

g. How will mitigation for impacts be documented. **DNR consideration:** Enbridge anticipates that this project will be exempt from the Wetland Conservation Act (WCA) under the Federal Utility Exemption, Minn. R. 8420.0420, subp. 4. All wetlands impacted by this utility project would be addressed by the USCOE Clean Water Act section 404 permit, the MPCA Clean Water Act section 401 water quality certification and the L3R Compensatory Wetland Mitigation Plan. Additional wetland mitigation is being required by DNR for the impacts to the five public waters wetlands to compensate for the additional services they provide as public waters. Enbridge has agreed to provide additional mitigation for impacts to the public waters wetlands.

h. Matting should be removed as soon as the construction is completed in the wetlands. **DNR consideration:** Matting will be removed after the final grading and clean up is completed. This results in fewer impacts to the wetlands than if the matting was removed after initial clearing, replaced for the construction of the trench, and then removed and replaced again for final grading and clean up. Vegetation will be reseeded after final construction and grading.

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

28. The purpose of Minnesota Rules 6115.0150 to 6115.0280 is to provide for the orderly and consistent review of public waters work permit applications in order to conserve and utilize the water resources of the state in the public interest. *See also* Minn. Stat. § 103G.245. In the application of these parts, DNR is guided by the policies and requirements declared in Minnesota Statutes, chapter 103G.

##### **A. The Application is Complete and Contains All Required Information**

29. Enbridge properly submitted an application for a public waters work permit through MPARS for the proposed construction activities of excavation and filling in public waters wetlands at five locations. Because the Project would change the course, current or cross section of the public waters, by means of fill, excavation and placement of materials on the bed of the public waters wetlands, a permit is required. *See* Minn. Stat. § 103G.245 subd. 1; Minn. R. 6115.0240, subp. 1.

30. As required by Minn. R. 6115.0240, subp. 2, Enbridge provided copies of easements procured from property owners for the crossing of the public waters wetlands. *See* Minn. R. 6115.0240, subp. 2.

31. The Application contains all the information specified in parts 6115.0150 to 6115.0280. *See* Minn. R. 6115.0240, subp. 3(A).

32. The Application contains maps, plans, and specifications describing the proposed Project as required by Minn. R. 6115.0240, subp. 3(B).

33. All public waters work permit applications must provide the information identified in Minn. R. 6115.0240, subp. 3(C)(1)-(4), and meet the requirements of Minn. Stat. § 103G.315, subd. 3. The Application must describe the anticipated changes in water and related land resources, unavoidable anticipated detrimental effects on the natural environment, and alternatives to the proposed action, and demonstrate that the proposed project is reasonable and practicable and will adequately protect public safety and promote the public welfare. The Application contains this information. For all public waters wetland crossings, the anticipated changes in water and land resources are temporary and the areas will be restored to pre-construction conditions, including revegetation. There will be no long-term impacts on the natural environment. At one public water wetland (PWI #15-044100), the only impact will be the placement of temporary fill. Fill will consist of placement of matting and geotextile fabric to create a base to store equipment and soil from a road bore crossing. This fill is unavoidable due to the location of the pipeline corridor approved by the PUC and the need to have additional temporary work space (ATWS) to accomplish the crossing safely. The ATWS will allow construction vehicles and equipment to be staged away from a roadway, providing a safe travel corridor for the public. Impacts to this Unnamed Wetland will be temporary in nature; no long term impacts to the wetland are expected. At four other public waters wetlands, Unnamed Wetland (PWI #57-000300), Frandsen Slough (PWI #29-032300,) Scout Camp Pond (PWI #11-072900) and Unnamed Wetland (PWI #09-014900), impacts will include excavation and temporary fill. Excavation will consist of opening up a construction trench for the installation of the pipeline. Temporary fill will consist of mats for construction access and temporary soil storage. This proposed crossing of the public waters wetlands is unavoidable due to the location of the pipeline corridor route as approved by the PUC. All wetlands will be crossed using the standard wetland construction methods (open trench). An alternative to the open trench method would be HDD but this alternative was rejected due to saturation of the wetlands, risks for frac-outs or uncontrolled flows from nearby springs, as in the case of Scout Camp Pond. Impacts to the four public waters wetlands will be temporary in nature, with the exception of permanent wetland conversion of a total of 0.076 acre in three of the public waters wetlands. All materials

removed from the wetlands are being returned to the trench for backfilling of the pipeline, and restoring the construction corridor. The sites will be revegetated and all construction equipment and matting will be removed after completion of the pipeline.

34. Per Minn. R. 6115.0240 subp. 3(C)(5), applications must also demonstrate that the proposed activity complies with all the following principles in descending order of priority: (a) avoids direct or indirect impacts to public waters that may destroy or diminish the public waters, (b) minimizes the impact to the public waters by limiting the degree or magnitude of the public waters activity and its implementation; (c) rectifies the impact by repairing, rehabilitating, or restoring the affected public waters; (d) reduces or eliminates the impact to the public waters over time by preservation and maintenance operations and (e) for a major change in the public waters, replaces unavoidable impacts to the public waters by restoring degraded or impacted public waters having equal or greater public value or, if public waters restoration opportunities are not reasonably available, creating and protecting additional replacement water areas having greater public value. The Application contains the above information. In descending order, the Project cannot entirely avoid direct or indirect impacts to these public waters because they are located on the PUC approved route for the Project. DNR notes that the PUC, not the DNR, has the authority to select the pipeline route and issue the Pipeline Routing Permit for the Project. Nonetheless, destruction or diminishment of the public waters is not expected, and the proposed work has been minimized to the extent possible. Enbridge has reduced the full construction workspace down from 120 feet wide to 95 feet wide, and reduced the trench sizing from the average of 22 feet wide down to 14 feet wide and the right of way corridor has been reduced from 50 feet to 40 feet for future maintenance. The Application includes installation of trench breakers at the beginning of the wetland edge and the end of the wetland edge at the construction trench to prevent water piping along the pipeline. Impacts will be rectified because all public waters wetlands impacted will be restored to pre-construction conditions, including revegetation of the wetland. If negative impacts are seen after construction, Enbridge will follow the PCMP for resolution for the impacts. The Application also indicates that impacts to public waters wetlands will be minimized through construction best management practices (BMPs), and impacts will be rectified or reduced over time based on restoration required by the EPP and the PCMP. In addition to wetland mitigation required by USCOE and MPCA, the DNR is requiring additional compensatory mitigation to compensate for the public value that is associated with public waters wetlands. The mitigation will help complete a restoration project for Swamp Lake titled: "FY17-OHF Swamp Lake" in Aitkin County. Swamp Lake is a public water basin (shallow lake) where wild rice has historically grown and is one of only thirteen lakes in the state the Minnesota Chippewa Tribe purchased in trust for the operation of rice camps. Due to high water levels, the wild rice has been declining, so as part of the project, Enbridge will provide compensatory mitigation of \$30,000 to assist in completion of replacement of a culvert and



channel restoration to aid in lowering water levels in the lake to promote the growth of wild rice. See ¶40 for more details on the value and amount of credits needed.

35. Enbridge has paid the fee for the Application, per Minn. R. 6115.0240 subp. 3(D).

36. The Application has been provided through GovDelivery to the applicable mayor of the city or secretary of the board of the soil and water conservation district or watershed district, as required in 6115.0240 subp. 3(E). *See* ¶14 above.

37. 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 information has been provided on the proposed activities authorized in part by Minn. R. 6115.0190, Minn. R. 6115.0200, Minn. R. 6115.0201 and Minn. R. 6115.0250, subp. 5. The Application indicates that impacts to the public waters wetlands would be minimized through construction BMPs and restored based on the Permit conditions as well as the EPP. Unavoidable impacts to these wetlands are subject to mitigation requirements of the permit and by the USCOE and the MPCA. The information available to the DNR is adequate to determine whether the proposed activities are reasonable, practical and will adequately protect public safety and promote the general welfare under Minn. Stat. § 103G.315. Enbridge has also submitted adequate information for DNR to determine that the excavation and fill will not cause pollution, impairment, or destruction of the air, water, land or other natural resources. *See* Minn. Stat. § 116D.04, subd. 6.

#### **B. Considerations of Factors for Public Water Wetland Permit Processing Minn. R. 6115.0250**

38. Minn. R. 6115.0250, subp. 1a: This rule indicates that the DNR may not issue a permit that will cause pollution, impairment, or destruction of the air, water, land, or other natural resources so long as there is a feasible and prudent alternative consistent with the reasonable requirement of the public health, safety, and welfare. If the commissioner determines that a major change in the public waters is justified and can be authorized by parts 6115.0190 subp. 5; 6115.0200, subp. 5; 6115.0210, subp. 5; 6115.0215, subp. 5; 6115.0220, subp. 5; 6115.0230, subp. 5; 6115.0270, subp. 4; or 6115.0208, subp. 4; the permit must include provisions to compensate for the detrimental aspects of the change. Compensation for the identified detrimental aspects of the permitted project include: a) restoring degraded or impacted public waters having equal or greater public value; b) creating or restoring additional replacement water area having equal or greater public value; or c) any other measures approved by the commissioner that compensate for the detrimental aspects of the change. *See also* Minn.

Stat. § 103G.245, subd. 7. Based on the pipeline route, as approved in the PUC Pipeline Routing Permit, it is not possible to entirely avoid impacts to these public waters wetlands. Enbridge has worked to minimize impacts to the wetlands while still remaining within the approved route. DNR anticipates that the MPCA and USCOE will require mitigation of wetland impacts under the Clean Water Act section 404 permit, the Clean Water Act section 401 water quality certification, and the associated L3R Compensatory Wetland Mitigation Plan. This plan requires Enbridge to restore all temporarily affected wetlands to pre-construction conditions, which is considered in-place compensation and to compensate for unavoidable wetland functional losses and permanent conversions within the right-of-way. Additionally, for special wetland categories, the L3R Compensatory Wetland Mitigation Plan requires a higher baseline mitigation ratio and mitigation ratio multipliers (determined by the recommendations in the Interagency Compensatory Wetland Mitigation Guidance) in order to ensure adequate compensation.

39. The USCOE 404 permit requires Enbridge to provide compensatory wetland mitigation for temporal loss of public waters wetlands during construction and for permanent conversion of a total of 0.076 acre of public water wetlands from forested or scrub-shrub vegetation communities to an herbaceous community within the 50-foot permanent easement pipeline corridor. The draft wetland mitigation plan that was included in the draft MPCA Clean Water Act section 401 Water Quality Certificate has the following mitigation requirements:

- MP 853.7-Unnamed Wetland (PWI #57-000300): total acres of impact = 0.942 acres, total credits required = 0.056
- MP 912.1-Unnamed Wetland (PWI #15-044100): total acres of impact = 0.177 acres, total credits required = 0.011
- MP 988.3-Frandsen Slough (PWI #29-032300): total acres of impact = 0.273 acres, total credits required = 0.008
- MP 1041.2-Scout Camp Pond (PWI #11-072900): total acres of impact = 0.129 acres, total credits required = 0.057
- MP 1120.2-Unnamed Wetland (PWI #09-014900): total acres of impact = 0.016, total credits required = 0.008

All public waters wetlands will be restored to pre-construction conditions to be determined by objective, verifiable performance standards and post-construction monitoring. The Permit is conditioned upon issuance of, and Enbridge's compliance with, the Clean Water Act section 404 permit and Clean Water Act section 401 water quality certification.

40. DNR concludes that permanent conversion of portions of some wetlands within the right-of-way, as described above, is a major change in the public waters wetlands. As described below, this change is justified under Minnesota Rules chapter 6115, and mitigation will compensate for the detrimental aspects of the change. In addition to the mitigation required

by the USCOE and MPCA under the Clean Water Act, DNR is requiring additional mitigation to compensate for the additional benefits provided by public waters wetlands as compared to other types of wetlands. This mitigation is described in ¶¶33 and 40.

41. The impacts to the public water wetlands total 1.5 acres for excavation. Typically replacement ratios are 1:1 and on average for the whole project, wetland credits are selling for \$20,000, and therefore DNR is requiring \$30,000 for compensatory wetland mitigation for impacts to the public waters wetlands. There are no site-specific mitigation plans for these public water wetlands but Enbridge will provide additional mitigation for the public waters wetlands impacts, which will be monetary (\$30,000) to help complete a restoration project for Swamp Lake in Aitkin County. Swamp Lake is a public waters basin (shallow lake) where wild rice historically has grown across the basin and is one of only thirteen lakes in the state where the Minnesota Chippewa Tribe purchased riparian lands in trust for rice camps. Due to high water levels, the wild rice has been declining, so as part of the Project, Enbridge will assist with replacement of a culvert and channel restoration to lower the water levels and help promote the growth of wild rice.

42. Minn. R. 6115.0250, subp. 5 details factors that the DNR must consider, if applicable, when considering an application for work in public waters wetlands. The DNR's consideration of each of the applicable factors is set forth in greater detail below.

43. Minn. R. 6115.0250, subp. 5(A)(1)-(3): This rule provides that the DNR may grant a public waters work permit for work within a public waters wetland if the application complies with parts 6115.0190 to 6115.0232 or parts 6115.0270 to 6115.0280. The public waters wetland also needs to have been assigned a shoreland classification or be classified as lacustrine wetland or deep water habitat, or the state or federal government must be titleholder to the beds or shores of the wetland.

- Unnamed Wetland (PWI #57-000300) in Pennington County is not assigned a shoreland classification; it is identified as wetland Type 3-inland shallow fresh water marsh and is located on private property. The Unnamed Wetland does not meet criteria set forth in part A. Minn. R. 6115.0250, subp. 5(B) would apply and is detailed below.
- Unnamed Wetland (PWI #15-044100) in Clearwater County is not assigned a shoreland classification; it is identified as wetland Type 4-inland deep fresh water marsh and is located on private property. Because the Unnamed Wetland is classified as a Type 4 wetland, it meets the criteria set forth in part A.
- Frandsen Slough (PWI #29-032300) in Hubbard County is not assigned a shoreland classification; it is identified as wetland Type 4-inland deep fresh water marsh and is

located on private property. Because Frandsen Slough is classified as a Type 4 wetland, it meets the criteria set forth in part A.

- Scout Camp Pond (PWI #11-072900) in Cass County is not assigned a shoreland classification; it is identified as wetland Type 4 inland deep fresh water marsh and is located on private property. Because Scout Camp Pond is classified as a Type 4 wetland, it meets the criteria set forth in part A.
- Unnamed Wetland (PWI #09-014900) in Carlton County is not assigned a shoreland classification; it is identified as wetland Type 5 inland open fresh water and is located on private property. Because the Unnamed Wetland is classified as a Type 5 wetland it meets the criteria set forth in part A.

44. Minn. R. 6115.0250 subp. 5(B): This rule provides that for applications not meeting the criteria in subpart 5(A), the permit application must comply with provisions for sequencing under rules promulgated under the Wetland Conservation Act, Minn. R. 8420.0520 and replacement provisions under Wetland Conservation Act rules, Minn. R. 8420.0522 to .0544, 8420.0810 and 8420.0820. Alternatively, the DNR may waive public waters work permitting jurisdiction to local units of government implementing the Wetland Conservation Act under Minnesota Rules chapter 8420. Minn. R. 6115.0250, subp. 5(B)(2) & (D).

- Unnamed Wetland (PWI #57-00300) in Pennington County meets the above requirements.

First, Enbridge anticipates that this project will be exempt from the Wetland Conservation Act (WCA) under the Federal Approvals, Minn. R. 8420.0420, subp. 4. Nonetheless, the Project meets the requirements for sequencing under Minn. R. 8420.0520. The Application demonstrates avoidance, minimization and mitigation measures, within the PUC authorized route. These measures have been identified above and include construction area minimization, construction practices to minimize impacts, restoration, and mitigation under the Clean Water Act section 404 permit as well as additional mitigation required by DNR. Further, Minn. R. 6115.0240, subp. 3(C)(5) has very similar sequencing requirements as Minn. R. 8420.0520, and those requirements are discussed in paragraph 33 above. As discussed above, Enbridge does not anticipate providing wetland replacement under Minn. R. 8420.0522 to .0544, 8420.0810 and 8420.0820 because it anticipates the Project is exempt under Minn. R. 8420.0420, subp. 4 but it will be providing wetland mitigation under the section 404 permit. DNR is not waiving its public waters permitting jurisdiction to the local government units.

**C. Consideration of Factors for Fill in Public Waters in Minn. R. 6115.0190 and Minn. R. 6115.0191, subp. 8 and Minn. Stat. § 103G.245.**

45. Minn. R. 6115.0190 and Minn. R. 6115.0191, subp. 8, detail factors that the DNR must consider, if applicable, when reviewing an application for filling into public waters. The DNR's consideration of each of the applicable factors is set forth in greater detail below.

46. Minn. R. 6115.0190, subp. 1 & 2: The DNR's goal is to limit the placement of any fill materials into public waters in order to minimize encroachment, change or damage to the environment; regulate the quantity and quality of fill; and maintain consistency within the floodplain, shoreland and wild and scenic rivers management standards. Enbridge intends to place fill materials (defined as unconfined or loosely confined materials) temporarily into all five public waters wetlands. Minn. R. 6115.0190, subp. 2. Only Unnamed Wetland (PWI #15-044100) in Clearwater County will have matting and soil bore materials not taken from the wetland placed within the wetland. The proposed activity will be temporary and have limited encroachment and impacts to the public waters wetland and its shoreline. For Unnamed Wetland (PWI #15-044100) in Clearwater County, Enbridge is proposing to store equipment and soils from a road bore crossing on mattings within the public waters wetland. The wetland will have a 7,500 square foot area of impact, which will consist of mats and geotextile fabric to place the soil on. Impacts will be temporary and the geotextile fabric on top of the matting will help prevent road bore soils and materials from entering the wetland. Three other public waters wetlands (Unnamed Wetland (PWI #57-000300) in Pennington County, Frandsen Slough (PWI #29-032300) in Hubbard County, Scout Camp Pond (PWI #11-072900) in Cass County) will have temporary impacts from fill (construction matting) placed in the beds of the public waters wetlands for access and travel routes for construction of the pipeline and excavation activities. Only Unnamed Wetland (PWI #09-014900) in Carlton County will not have any fill impacts from matting as the travel area will be in an upland location. All of these wetlands will also have excavated material from the wetlands placed along the construction route. All impacts from the matting are considered temporary. All five public waters wetlands will have temporary storage of the excavated materials from the completion of the pipeline and are listed as such below:

- Unnamed Wetland (PWI #57-000300) fill quantities from matting: 810 feet long x 40 feet wide x 0.67 feet deep/27 = 804 cubic yards of fill (mats only) plus 3,780 cubic yards of excavated wetland soils. Total fill and excavation impacts equals 4,584 cubic yards of fill.
- Unnamed Wetland (PWI #15-044100) fill quantities from matting: 100 feet long x 75 feet wide x 0.67 feet deep/27 = 186.11 cubic yards of fill (mats only) plus 170 cubic yards of excavated soil from road boring. Total fill and excavation impacts equals 356 cubic yards of fill.

- Frandsen Slough (PWI #29-032300) fill quantities from matting: 265 feet long x 40 feet wide x 0.67 feet deep/27 = 263 cubic yards of fill (mats only) plus 1,013 cubic yards of excavated wetland soils. Total fill and excavation impacts equals 1,276 cubic yards of fill.
- Scout Camp Pond (PWI #11-072900) fill quantities from matting: 115 feet long x 40 feet wide x 0.67 feet deep/27 = 114 cubic yards of fill (mats only) plus 843 cubic yards of excavated wetland soils. Total fill and excavation impacts equals 957 cubic yards of fill.
- Unnamed Wetland (PWI #09-014900) fill quantities will be 425 cubic yards of excavated wetland soils.

47. Minn. R. 6115.0190, subp. 3: This rule lists prohibited fill placement within public waters. The proposed temporary fill is not prohibited because it is not to achieve vegetation control, is not creating uplands, will not be used to stabilize the beds of the public waters wetlands or active springs and is not disposing of materials removed from activities carried out above the ordinary high water level nor is the fill (matting) being used to construct a roadway/pathway to islands. The fill will be temporary and used only to carry out activities within the beds of the public waters such as excavation for the installation of the pipeline.

48. Minn. R. 6115.0190, subp. 4: This rule lists the criteria for which no permit is required. Because the Application does not involve the installation of a beach sand blanket or placement of fill in a public watercourse with a drainage area of less than five square miles, the proposed fill activity does not meet the no permit-required criteria. Accordingly, a public waters work permit is required.

49. Minn. R. 6115.0190, subp. 5(A): This rule requires DNR to determine that “the project does not exceed more than a minimum encroachment, change or damage to the environment, particularly the ecology of the waters.” *See also* Minn. Stat. § 103G.245, subd. 7. Enbridge has minimized the width of the travel lane in order to reduce the width of the matting needing to be placed in the wetland. Within the scope of the route authorized in the PUC’s RP, Enbridge also has adjusted crossing locations in the public waters wetlands to minimize encroachment. *See* Application, Supplemental Information, Section 3.1.

50. Minn. R. 6115.0190, subp. 5(B): This rule requires DNR to only allow fill that “consists of clean inorganic material that is free of pollutants and nutrients.” Enbridge must comply with the EPP (*See* EPP Attachment B, section 2.0) that requires cleaning of construction mats to prevent the spread of invasive species. The EPP includes a Noxious and Invasive Species Management Plan that details how Enbridge will utilize construction BMPs to prevent

the spread of invasive species. Additionally, road bore soil will be placed on top of geotextile fabric to prevent any soils not native to the wetland from entering the wetland; no fill materials should stay on site after construction activities except for soils excavated from that wetland. For the four public waters wetlands that will have excavation in the bed of the wetlands, Enbridge will take organic/inorganic spoil and place it on the non-working side of the corridor within the existing wetlands. This fill complies with this rule because it is free of pollutants and nutrients from outside sources and is of the same materials as the existing non-excavated portion of the wetlands.

51. Minn. R. 6115.0190, subp. 5(C): This rule requires that “the existence of a stable, supporting foundation is established by appropriate means, including soil boring data where deemed necessary by the commissioner.” Based on the location of the temporary work space at the outer boundary of the Unnamed Wetland (PWI #15-044100) and the proposed utilization of construction mats, soil boring data was not required. At the public waters wetlands, matting for access routes will be placed on a stable foundation and materials removed from the wetland will be placed on the non-working site of the corridor in the wetland itself. DNR concluded that stability of the foundation is not problematic at any of the sites for this temporary placement of fill.

52. Minn. R. 6115.0190, subp. 5(D): This rule requires that “where erosion protection is deemed necessary by the commissioner, the site conditions and fill materials are capable of being stabilized by an approved erosion control method such as riprap, retaining wall, or other method which is consistent with existing land uses on the affected public water.” Enbridge’s EPP outlines construction-related environmental policies, procedures and measures of protection during construction; this includes BMPs to prevent runoff from entering the water column. Enbridge would also have to comply with a Stormwater Pollution Prevention Plan filed with the MPCA under the Clean Water Act construction stormwater general permit. DNR requested additional measures to be utilized when storing the road bore soil; it will be placed on geotextile fabric over construction mats to prevent any long-term impacts to the Unnamed Wetland (PWI #15-044100). Excavated soil will not be stored on matting in the other four public waters wetlands but placed directly into the public waters wetlands.

53. Minn. R. 6115.0190, subp. 5(E): This rule requires DNR to consider if the proposed project is “the minimal impact solution to a specific need with respect to all other reasonable alternatives.” DNR had discussed with Enbridge if the temporary workspace area could be moved in order to store the road bore soil elsewhere during initial comment and review of the Application. Based on the location of the road bore and the concerns for the safety of the public that use this road, there were no other reasonable options for this storage; this has been documented in the Application. For the other four public waters wetlands, the minimal impact



solution to the specific need is to allow the soil to be placed in the wetland and not hauled off site or to an upland area because hauling soil back and forth would risk introducing different vegetation into the wetlands and compaction of the wetlands. The minimal impact solution is to leave the materials in the wetland for quick and easy backfilling after the pipe is in place. It is not feasible to avoid crossing these public waters wetlands because the approved pipeline route crosses wetlands. It is the PUC, not the DNR that has the authority to select the route and issue the route permit. The Application has minimized working spaces, trench openings and right of way corridors to minimize the impacts to the public waters wetlands.

54. Minn. R. 6115.0190, subp. 5(F): This rule requires DNR to consider “the size, shape, depth, shoreline, and bottom character and topography, and susceptibility of the beds of public waters to actions of wind, waves, and currents are such that the fill will be stable.” All five public waters wetlands are heavily vegetated and impacts are limited to the outer edges of the wetlands. Impacts from wind, waves and currents are not expected to be an issue at these locations.

55. Minn. R. 6115.0190, subp. 5(G): This rule requires DNR to consider if “adverse effects on the physical or biological character of the waters are subject to feasible and practical measures to mitigate the effects.” Enbridge has minimized impacts by adjusting work spaces to limit removal of vegetation or tree removal, reduced right-of-way widths along the entire corridor, and diminished trenching widths and matting widths in the public waters wetlands. The effects on the physical and biological character of the wetlands are subject to feasible and practicable mitigation measures. Impacts will occur but will be temporary, with the exception of minor permanent wetland conversions, and any adverse effects will be monitored through the PCMP. DNR would require additional restoration or mitigation for the public waters wetland crossings if additional unanticipated impacts are seen from the filling and excavation activities, as per the PCMP. See ¶¶33 and 40 for more information on the required mitigation.

56. Minn. R. 6115.0190, subp. 5(H): This rule requires DNR to verify that “the proposed filling is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for waters involved.” DNR did not receive any comments from local governments on the Application that would indicate an inconsistency with local shoreland ordinances. DNR reviewed available floodplain and shoreland ordinances; project appears consistent to the reviewed documents. The proposed temporary fill will not have long-term impacts on floodplain or shoreland of the five public waters wetlands. None of the public waters wetlands are scenic rivers and no additional management standards are associated with this location.

57. Minn. R. 6115.0190, subp. 5(I): This rule requires DNR determine that “the proposed filling is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.” *See also* Minn. Stat. § 103G.245, subd. 6. The Application was sent for review to local and regional government agencies; no comments were provided as noted in section III(B) of these findings of fact. The Application is also consistent with the PUC Route Permit and Certificate of Need.

58. Minn. R. 6115.0191, subp. 8 (A): This rule requires DNR determine that “the intended purpose of the fill is reasonable with respect to all other alternatives and there are no feasible and practical means to attain the intended purpose without filling.” The construction mats that will be placed within Unnamed Wetland (PWI #15-044100) will help protect the bed of the waterbody from greater impact by limiting the direct placement of non-wetland materials from the road bore in the wetland; geotextile fabric on top of the matting used for storing soil from the road bore reduces the overall impact to the waterbody. The additional temporary work space (ATWS) will allow construction vehicles and equipment to be staged off the roadway, providing a safe travel corridor for the public. In the other four public waters wetlands, placement of fill consisting of temporary construction matting and excavated materials is reasonable with respect to the alternative of hauling soil off site, which would cause more wetland impacts by increasing construction traffic and would increase risk of off-site contamination by invasive species.

59. Minn. R. 6115.0191, subp. 8 (B): This rule requires DNR to consider that “the proposal will adequately protect public safety and promote the public welfare.” *See also* Minn. Stat. § 103G.315, subd. 3. For Unnamed Wetland (PWI #15-044100) the temporary construction space is located just off a public road underneath of which Enbridge will be boring. By placing the temporary construction work space and matting at this location and storing road bore soils in the public waters wetland, Enbridge will be able to improve safety by keeping construction equipment and personnel outside of the public road right-of-way. The other four wetlands will have temporary matting placed in them to provide access across the wetlands and limit the amount of full construction spread moves on public roadways. Spread moves result in impacts to roadways, residents and communities along the travel path. Weight restrictions on road and bridges also provide logistical concerns. Matting in the wetlands, though an impact to the public waters wetlands, is a minimization technique that will protect public safety by reducing the amount of construction traffic and equipment on the public roadways.

60. As outlined in ¶¶44-58, the DNR has considered the Application under Minn. R. 6115.0190 and Minn. R. 6115.0191, subp. 8 and Minn. Stat. § 103G.245, and the Application satisfies the applicable regulatory requirements.

**D. Considerations of Factors for Excavation of Public Waters in Minn. R. 6115.0200 and Minn. Stat. § 103G.245.**

61. Minn. R. 6115.0200 and Minn. Stat. § 103G.245 detail factors that the DNR must consider, if applicable, when considering an application for excavation in public waters. The DNR's consideration of each of the applicable factors is set forth in greater detail below.

62. Minn. R. 6115.0200, subp. 1 & 2: The DNR's goal is to limit excavation of materials in the beds of public waters in order to preserve the natural character, minimize encroachment, limit changes or damage to the environment; regulate the nature, degree and purpose of excavation; and control the deposition of materials excavated from public waters. Enbridge intends to excavate within the four public waters wetlands (Unnamed Wetland (PWI #57-000300), Frandsen Slough (PWI #29-032300), Scout Camp Pond (PWI #11-072900) and Unnamed Wetland (PWI #09-014900)) in order to install a 36-inch pipeline for transport of crude oil. Once the pipeline is placed within the trench, the excavated materials will be backfilled over the pipe and the site restored. The proposed activity will be temporary and have limited encroachment and impacts to the public waters wetlands and their shoreline. Four out of the five public waters wetlands will have materials excavated as part of the completion of the pipeline and are listed as such below:

- Unnamed Wetland (PWI #57-000300) excavation calculation: 810 feet long x 14 feet wide x 9 feet deep/27 = 3,780 cubic yards of excavated wetland soils.
- Frandsen Slough (PWI #29-032300) excavation calculation: 217 feet long x 14 feet wide x 9 feet deep/27 = 1,013 cubic yards of excavated wetland soils.
- Scout Camp Pond (PWI #11-072900) excavation calculation: 115 feet long x 22 feet wide x 9 feet deep/27 = 843 cubic yards of excavated wetland soils.
- Unnamed Wetland (PWI #09-014900) excavation calculation: 91 feet long x 14 feet wide x 9 feet deep/27 = 425 cubic yards of wetland soils.

63. Minn. R. 6115.0200, subp. 3: Based on the Application the excavation is not prohibited. The Project will not gain access to navigable water depths when other reasonable access can be obtained; it is not intended to extend riparian rights to non-riparian landowners; it is not intended to provide fill materials for development; the excavation will not cause an issue with recurrent sedimentation as the materials will be placed back into the trench; and the excavation will not cause any seepage of water that will lower the water level of public waters. The project will not impact significant fish and wildlife habitat as the Permit contains restrictions

on working dates for rare and native plant and animal species. The Project is required to have a Takings Permit for threatened and endangered species in those wetlands that have known occurrences.

64. Minn. R. 6115.0200, subp. 4: Based on the Application the Project will not meet the no permit required criteria; therefore a public waters work permit is required for the proposed activity. The excavation does not involve work in a public watercourse with a drainage area of less than five miles, removal of debris, or the repair of a public ditch system.

65. Minn. R. 6115.0200, subp. 5(A): This rule requires that the DNR determine if the proposed project is reasonable and practical based upon geologic and hydrologic conditions including but not limited to: quantity and quality of local drainage at the site; type of sediment/soil strata and underground formations in the vicinity; life expectancy of the excavation with respect to bedload, longshore drift, and siltation patterns in the project vicinity; and protection of the water body from increased seepage, pollution or other hydrologic impacts. Based on the location and geology of the public waters wetlands, the impacts from the Project should be limited to short term impacts following site restoration because excavated materials will be placed back into the excavated trench and vegetation restored. The pipeline will be installed four feet below the bed of the public waters wetlands, and surface water movement should not impact the life expectancy of the excavation. To prevent impacts to subsurface flows, Enbridge has committed to installing trench breakers along both sides of the pipeline to allow groundwater to move freely laterally through the wetland and not be piped along the side of the pipeline. Post construction monitoring is required to ensure that long-term hydrological impacts do not occur in these wetlands. If unanticipated impacts are identified, additional restoration and/or mitigation will be required.

66. Minn. R. 6115.0200, subp. 5(B): This rule requires that the DNR determine that the disposal of excavated materials is consistent with rule requirements that are identified in order of preference. Enbridge proposes to use the excavated materials to backfill the pipeline; DNR has determined that this complies with Minn. R. 6115.0200, subp. 5(B)(2)(d) because redeposition of the excavated materials will promote regrowth of natural vegetation, resulting in improvement of natural conditions for the public benefit. Redeposition of excavated materials will assist in mitigating impacts to native plant communities. In addition, the excavated materials are free from pollutants and redeposition of these materials will not result in suspended sedimentation, obstruction of navigation or a loss of fish or wildlife habitat.

67. Minn. R. 6115.0200, subp. 5(C): This rule requires DNR to determine if “the proposed project represents the ‘minimal impact’ solution to a specific need with respect to all

other reasonable alternatives and does not exceed more than the minimum encroachment, change, or damage to the environment, particularly the ecology of the waters.” *See also* Minn. Stat. § 103G.245, subd. 7. Enbridge has limited their workspace and construction impacts in order to reduce impacts to the public waters wetlands to a feasible extent, but Enbridge’s alternatives are constrained by the RP corridor and the location of other public utilities within that corridor. Enbridge has narrowed width of the trench from 22 feet to 14 feet on most public waters wetland crossings, kept the excavated materials within the wetlands to reduce the amount of compaction from traffic in the wetlands and the risk of infesting the wetlands with invasive species, and adjusted additional temporary work spaces (ATWS) to avoid other wetlands and reduce tree removal. The proposed project is the minimal impact solution to the specific need for crossing the public waters wetlands within the route approved by the PUC.

68. Minn. R. 6115.0200, subp. 5(D): This rule requires DNR to determine that “the excavation is limited to the minimum dimensions necessary for achieving the desired purpose.” The width of the proposed excavation is determined based on safety requirements for the installation of the pipeline and the depth is regulated based on federal requirements (49 C.F.R. § 195.248). Based on this information, the Project excavation is limited to the minimum dimensions to achieve the project goal.

69. Minn. R. 6115.0200, subp. 5(E): This rule requires DNR to determine that if the public water is “perched on an impervious stratum, soil borings show that the proposed excavation will not rupture the impervious stratum.” The Application anticipates that the soil thickness at these four public waters wetlands (Unnamed Wetland (PWI #57-000300), Frandsen Slough (PWI #29-032300), Scout Camp Pond (PWI #11-072900) and Unnamed Wetland (PWI #09-014900) extends beyond the nine foot trench depth and the Project will not impact any impervious stratum DNR concurs that soils of these wetlands are deep enough to avoid penetration of an impervious stratum and did not require soil borings at these locations.

70. Minn. R. 6115.0200, subp. 5(F): This rule requires that “the biological character of the waters and surrounding shorelines is affected to the minimum degree feasible and practical.” Impacts to the four public waters wetlands (Unnamed Wetland (PWI #57-000300), Frandsen Slough (PWI #29-032300), Scout Camp Pond (PWI #11-072900) and Unnamed Wetland (PWI #09-014900)) will be minimal and the overall biological character of the water and shorelines should only be impacted temporarily and later restored to pre-construction conditions. Enbridge will be replacing the existing soil back into the trench, not hauling in foreign soils to use for backfilling material; trench breakers will be used to prevent piping or water movement along the pipeline, keeping water flowing as before. All four locations are subject to the PCMP. Enbridge will be gathering pre-construction baseline data on the wetlands

and will be monitoring them each year for up to five years for impacts to the wetlands, such as changes in hydrology and vegetation, with potential to extend the monitoring period if necessary. Vegetation surveys including plant surveys using the Rapid Floristic Quality Assessment (FQA) and groundwater monitoring in peatlands will occur as part of the PCMP. The PCMP outlines corrective actions that will take place if changes are occurring in the wetlands including but not limited to regrading of the wetlands if there is crowning or subsidence or revegetation if the wetland plant communities are not re-establishing. The PCMP contains information on required post-construction wetland monitoring to ensure restoration success.

71. Minn. R. 6115.0200, subp. 5(G): This rule requires DNR to determine if “adverse effects on the physical or biological character of the waters are subject to feasible and practical measures to mitigate the effects.” The Application provides for construction measures to minimize impacts and restoration of the site following construction to pre-construction conditions to the extent that it is feasible and practicable. The PCMP outlines actions to take after construction to ensure that the wetlands are restored to pre-construction condition and ways to monitor the success of the restoration. Additional mitigation measures will be taken if impacts to the public waters wetlands are seen after construction.

72. Minn. R. 6115.0200, subp. 5(H): This rule requires DNR to determine if the “water supply, navigation, and drainage characteristics of the waters is protected to ensure that the interests of the public and private riparian landowners are not adversely affected by the proposed excavation.” The Project is not anticipated to impact water supply or navigation of the public waters wetlands. The Application and the associated EPP include construction measures to minimize impacts to these wetlands. Based on the PCMP-Attachment C of the Application the drainage characteristics of the four public waters wetlands (Unnamed Wetland (PWI #57-000300), Frandsen Slough (PWI #29-032300), Scout Camp Pond (PWI #11-072900) and Unnamed Wetland (PWI #09-014900)) should not be impacted by the proposed Project, nor will there be impacts to the riparian landowners. Enbridge will survey the public waters wetlands pre-construction and restore the wetlands to the pre-construction elevations when the excavation is completed. If monitoring shows impacts, Enbridge will be required to implement adaptive management strategies to restore the wetlands to pre-construction conditions including restoration of hydrology and vegetation. *See* Application, Supplemental Information, Attachment C.

73. Minn. R. 6115.0200, subp. 5(I): This rule requires DNR to consider if “the proposed excavation is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.” DNR has not received any comments on the Application from local governments. DNR reviewed available floodplain

and shoreland ordinances; project appears consistent to the reviewed documents. The proposed excavation should not have long-term impacts on the floodplain or shoreland of the four public waters wetlands (Unnamed Wetland (PWI #57-000300), Frandsen Slough (PWI #29-032300), Scout Camp Pond (PWI #11-072900) and Unnamed Wetland (PWI #09-014900)). The four public waters wetlands are not classified as scenic rivers and no additional management standards are associated with these location.

74. Minn. R. 6115.0200, subp. 5(J): This rule requires DNR to consider if “the proposed excavation is consistent with plans and management programs of local and regional governments, provided that such plans are consistent with state plans and programs.” *See also* Minn. Stat. § 103G.245, subd. 6. The Application was sent for review to local and regional government agencies; no comments have been provided as noted in section III(B) of these findings of fact. DNR staff have reviewed county government plans where these wetlands are located and did not identify any potential inconsistencies that the project would have with these plans. To DNR’s knowledge, the proposed excavation complies with local and regional and state water and land resources management plans.

75. Minn. R. 6115.0200, subp. 5(K): This provision is not applicable to Enbridge’s application.

76. As outlined in ¶¶ 60-74, the DNR has considered the Application under Minn. R. 6115.0200 and the Application satisfies the applicable regulatory requirements.

77. None of the specific standards for excavation in Minn. R. 6115.0201 are applicable to the Project.

78. Minn. Stat. § 103G.245, subd. 8: This statute requires that the DNR only issue public waters work permits for projects that involve excavation if the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner and the work under the permit is consistent with the shoreland zoning ordinance. As discussed above, no local governments provided comments to DNR on the Project. The temporary excavation in the public waters wetlands and subsequent restoration is consistent with local shoreland zoning ordinances. No above ground structures will be constructed within the shoreland area of these wetlands and vegetation removal will be minimized and restored after pipeline construction. The wetland and shoreland area will be returned to pre-existing conditions as much as practicable. The permit also includes provisions for the re-deposition of excavated materials as required by this statute.



## **E. The Proposed Public Water Works Permit 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, or destruction.”

*See* Minn. Stat. § 116D.04, subd. 6; *see also* Minn. R. 6115.0250, subp. 1 (A).

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

*See* Minn. Stat. § 116B.02, subd. 5.

81. In reviewing the administrative record, including the FEIS and the Application, DNR considered the quality and severity of any adverse effects from the excavation and filling of public waters wetlands, including any potential long-term adverse effects, whether these public waters are unique or rare, the potential significant consequential effects of the proposed work on other natural resources, and the direct and consequential impacts of the proposed work on the environment.

82. As detailed herein, the proposed excavation and filling, subject to the conditions of the public waters work permit, will comply with all applicable state environmental protection standards, including the requirements of Minnesota Statutes chapter 103G and Minnesota Rules chapter 6115 governing public waters work permits.

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

84. The Project will be also subject to other state and federal requirements and must comply with all applicable environmental protection standards. Wetland mitigation for unavoidable wetland impacts will be required under a Clean Water Act section 404 permit issued by the USCOE. Wetland monitoring will be required under the section 404 permit.

85. Compliance with these regulatory requirements serves to ensure that the proposed excavation and placement of fill under the public waters work permit will not result in pollution, impairment, or destruction of natural resources. The construction of pipeline crossings through public waters wetlands will not cause pollution, impairment, or destruction because the Project's effects are temporary in nature, BMPs will further reduce effects caused by construction, and the excavation and filling of the wetlands meets the public waters work permit regulations. All wetland impacts will be regulated by the USCOE Clean Water Act section 404 permit, including replacement for the temporary and permanent impacts to all wetlands. Impacts to the public waters above and beyond the temporary impacts will require additional mitigation by the DNR.

86. As outlined above, the DNR has considered the proposed work in public waters wetlands under the permit in accordance with MEPA, and determines that the proposed project 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 and supervise activity that changes or will change the course, current or cross section of public waters, including construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures and waterway obstructions in public waters.” Minn. Stat. § 103A.201, subd. 1. The Legislature directed the DNR to adopt rules to regulate work in public waters. See Minn. Stat. §§ 103G.245, .315.

2. The DNR has authority to regulate work in public waters pursuant to Minn. Stat. § 103G.245.

3. The DNR has the authority to waive a hearing on a public waters work 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 DNR make findings of fact on issues necessary for determination of the permit application considered. Orders by the DNR must be based on findings of fact made upon substantial evidence.

5. Enbridge's proposed excavation and filling of public waters wetlands requires a public waters work permit. *See* Minn. Stat. § 103G.245, subd. 1; Minn. R. 6115.0190, subp. 5 and Minn. R. 6115.0200, subp. 5.

6. The DNR has the authority to impose conditions on any public waters works permit it issues. *See* Minn. Stat. § 103G.315, subd. 1; Minn. R. 6115.0250, subp. 3.

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

8. The Application is complete and Enbridge has provided all information required for review under applicable statutes and rules. *See* Minn. Stat. §§ 103G.245, .315; Minn. R. 6115.0190, .0191, .0200, .0240.

9. 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. Stat. § 103G.315, subd. 2.

10. The filling and excavation of the five public waters wetlands will be temporary and will be completed pursuant to the issued permit and conditions set forth in the Permit. The Application meets conditions and criteria set forth in Minn. R. 6115.0190, .0191, .0200, .0240, and .0250 and Minn. Stat. § 103G.245.

11. Permit Application No. 2018-3419 satisfies the requirements set forth in Minn. Stat. § 103G.245 and Minn. R. 6115.0150-.0280.

12. Pursuant to Minn. Stat. § 103G.315, subd. 6, Enbridge has met its burden of proving that its plans for the filling and excavation of the five public waters wetlands are reasonable, practical, and will adequately protect public safety and promote the public welfare.

13. Issuance of the permit for the filling and excavation of the five public waters wetlands is not prohibited by Minn. Stat. § 116D.04, subd. 6 because the filling and excavation

will not cause pollution, impairment or destruction of the public waters wetlands. If impacts are seen after construction of the pipeline crossings in the public waters wetlands, the Permit requires compliance restoration requirements with the PCMP and the VMP.

14. Pursuant to Minn. Stat. § 103G.315, subd. 11, the DNR may at any time cancel the Permit to protect the public interest or apply further conditions on the terms of the Permit and amend and reissue the Permit.

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

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

## **ORDER**

1. DNR hereby waives a public hearing on the Application for Public Waters Work Permit No. 2018-3419 pursuant to Minn. Stat. § 103G.311, subd. 4.
2. Based upon all files, records, and proceedings in this matter and upon the DNR's Findings of Fact and Conclusions, Public Waters Work Permit No. 2018-3419 is hereby issued to Enbridge for excavation and filling of five public waters wetlands for the construction of the pipeline crossings subject to the conditions set forth in the Permit.
3. The applicant or the applicable municipality, watershed district or soil and water conservation district may file a demand for a hearing on the Application in accordance with Minn. Stat. § 103G.311, subd. 5 and Minn. R. 6115.0250, subp. 3 within 30 days after mailing or electronic transmission of notice of this Order.

DNR Authorized Signature *wet or e-signature*:

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