

**ENBRIDGE LINE 3  
REPLACEMENT PROJECT  
Public Waters Works Permit  
No. 2019-0463**

**(Willow River Bridge)**

**FINDINGS OF FACT, CONCLUSIONS  
AND ORDER**

Work in Public Waters Permit No. 2019-0463

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. 2019-0463**

**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 bridge crossing over the Willow River in Aitkin County on private property. These Findings of Fact only address Enbridge's Willow River bridge permit application (the "Application"). 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 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.

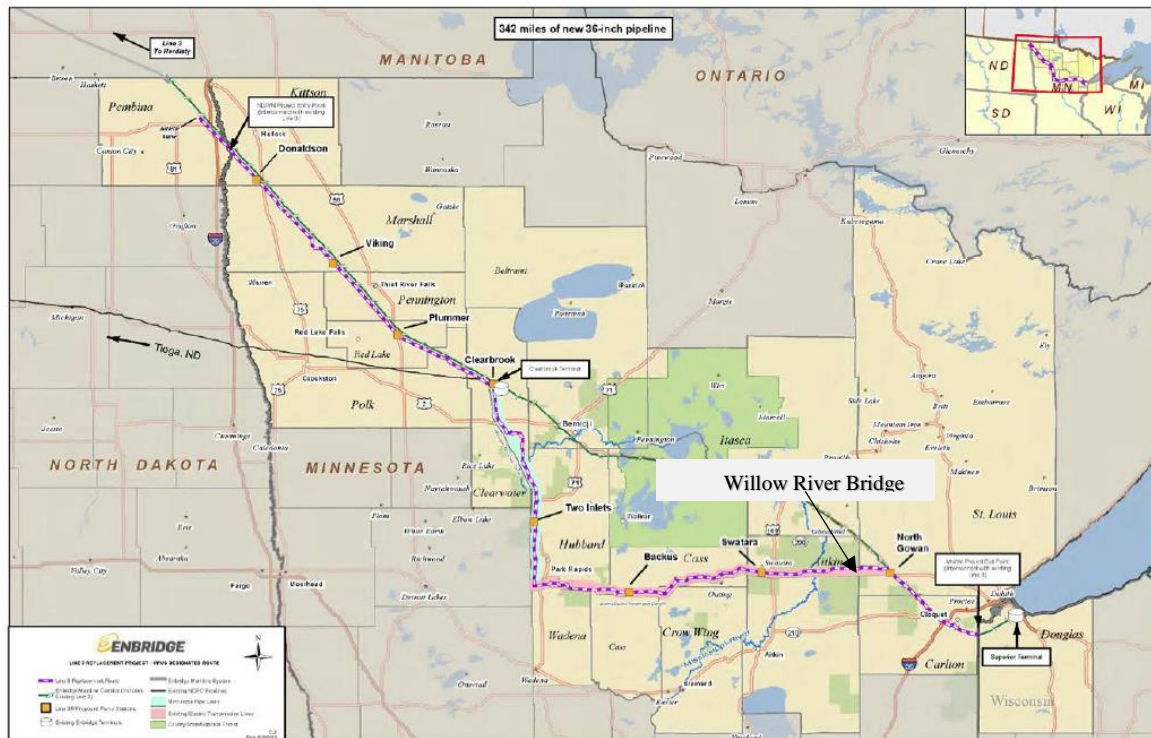
4. As required by Minn. R. 4410.7055, DNR has reviewed the second revised FEIS and it serves to inform DNR’s current findings.

5. The permit Enbridge seeks in this proceeding relates solely to the permanent bridge over the Willow River. Several 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 work in wetlands, 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-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, and six wetlands. Five of the public watercourses are trout stream tributaries. With the exception of the six public water crossings in public waters wetlands located within private lands, all public water crossings will be addressed in the Utility License to Cross Public Waters. One wetland at mile post 963.7 in Hubbard County does not require a work in public waters permit as the activity is vegetation removal by cutting, and no excavation or filling will be taking place. This activity does not involve complete removal of the vegetation, so DNR will not require an Aquatic Plant Management permit. An Aquatic Plant Management (“APM”) permit is also not needed for this wetland crossing per Minn. R. 6280.0250, subp. 1(D). The five public waters wetland crossings located on private lands are addressed in the Work in Public Waters Permit Application 2018-3419.

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

9. Willow River is a public watercourse located in the Northwest Quarter of the Northeast Quarter, Section 31, Township 51 North, Range 24 West in Aitkin County and was identified in the FEIS as listed in the Nationwide Rivers Inventory for scenery. The Project

involves crossing this river during pipeline installation by utilizing horizontal directional drilling, which will be authorized under the DNR Utility License to Cross Public Waters. The Project will also include the installation of a valve site that will need to be readily accessible; this permit (2019-0463) for bridge construction across the Willow River will provide the access to this valve site.

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

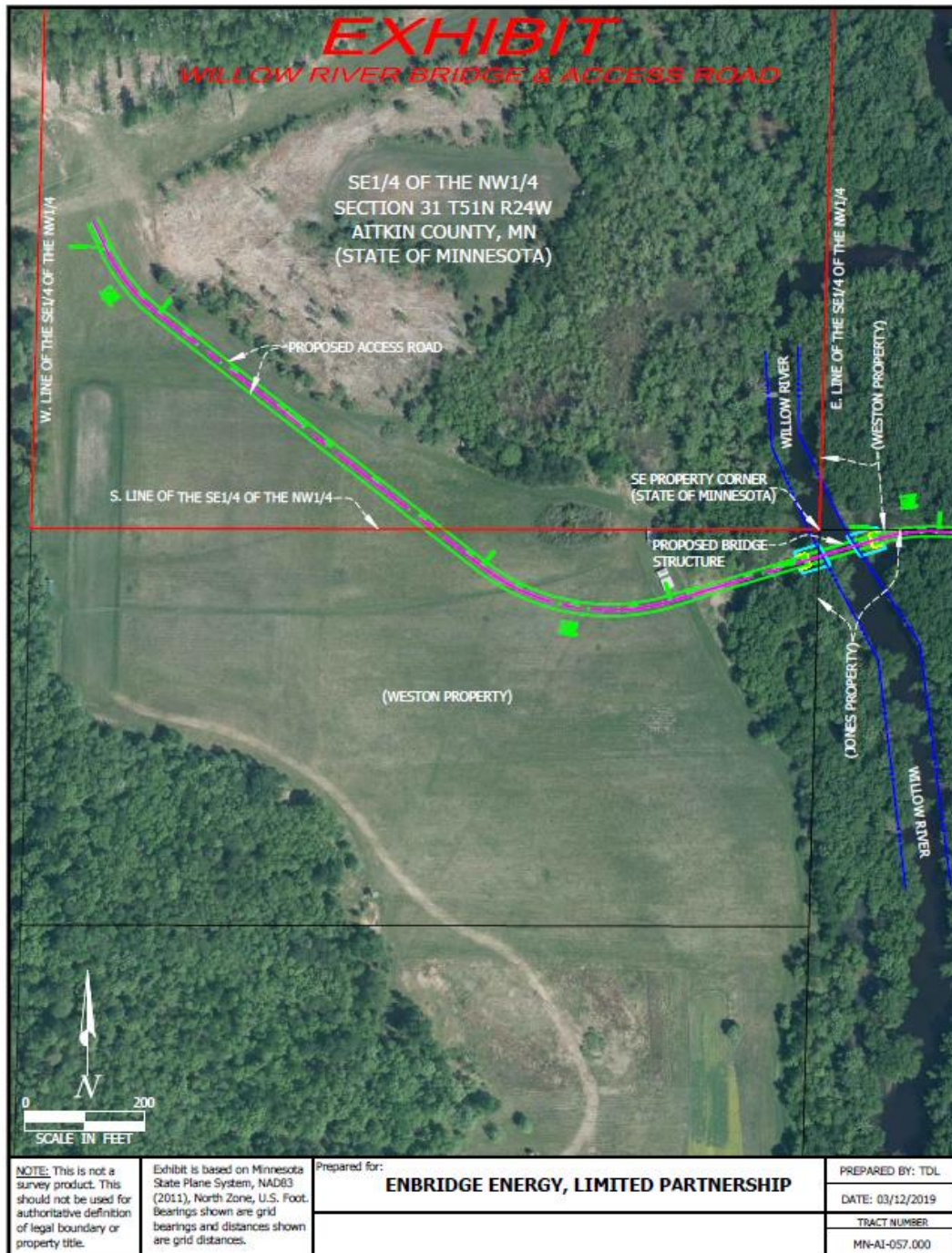
#### **A. Enbridge Submits Application to DNR for Public Waters Work Permit-Bridge Construction at Willow River**

10. Enbridge proposes to construct a permanent bridge over the Willow River in Aitkin County. Because the crossing will be permanent 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.

11. On March 4, 2019, Enbridge submitted Individual Public Waters Work Permit Application No. 2019-0463 – Bridge Construction/Modification/Replacement 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. 2019-0463.

12. The Application includes a description of the project, a statement of the overall project purpose and need, and a specific request for an individual bridge crossing, along with supporting figures, photographs and technical information. The proposed bridge will be a single 117-foot span steel pony truss structure with a laminated timber deck. The bridge will bear on helical piles and the embankment at the river crossing will be supported by steel sheet pile, with wing walls perpendicular to the river.





13. On December 20, 2019, after receiving comments on its initial application, Enbridge submitted a revised permit application that included easement documents between Enbridge and the landowners and updated engineering design sheets. On November 8, 2020, Enbridge submitted a final Environmental Protection Plan (EPP) and a final Post-Construction Vegetation Management Plan for Public Land and Waters dated November 2020, but it did not revise the Application.

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 entity 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 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 GovDelivery from Aitkin County, Aitkin County Soil and Water Conservation District and five tribal governments. In addition, the DNR sent a request for comments to state and federal agencies such as USCOE, Board of Water and Soil Resources (BWSR), MPCA, Minnesota Department of Health (MDH) and Minnesota Department of Agriculture (MDA).

17. No comments were received from Aitkin County, the Aitkin SWCD, the USCOE, BWSR, MPCA, MDH or MDA on this Application. Comments raised by tribal governments are discussed below.

18. From March 21 through May 6, 2019 (original application), and from February 12 through March 12, 2020 (revised application), the DNR requested internal comments on the Application.

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 submission, 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. Comments relevant to application 2019-0463 are addressed below.

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

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 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 Response.**

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

a. Honor the Earth has commented on the Willow River bridge; “What is the impact of the bridge in the sensitive environment?” “How will the bridge impact migratory



patterns?” “What about access for rickers?” **DNR response:** Enbridge’s submitted bridge design, which was completed by a licensed engineer, demonstrates that the structure meets public safety requirements, the installation of riprap is reasonable with minimized encroachment below the OHWL and revegetation of the site is pursuant to reseeding guidelines described in the Environmental Protection Plan (EPP) and Post Construction Vegetation Management Plan for Public Lands and Waters (VMP). The EPP describes construction procedures and best management practices (BMPs) for the entire Project. DNR is not aware of any impacts to migratory birds or wild rice.

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

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

a. Hydraulic data for the Willow River was needed for reviewing the updated application. **DNR consideration:** A hydraulics report was submitted by Enbridge during the initial application submittal; it was not included with the updated materials as there were no changes to the structure design that would impact the previously submitted modeled hydraulics. This report was deemed suitable for review of the updated application.

b. Staff identified the need for adequate sizing of the floodplain culverts. **DNR consideration:** Based on the hydraulics report, the floodplain culverts included in the updated design plans within the access road are included to keep the floodplain connected and are not intended to meet hydraulics standards set forth in state rule for placement within a public water. Sizing of culverts appear adequate for their purpose and will be installed outside of the Ordinary High Water Level (OHWL).

c. Will there be mitigation for any wetland impacts associated with the bridge construction? **DNR consideration:** Enbridge anticipates that this project will be exempt from the Wetland Conservation Act (WCA) under the Federal Utility Exemption, Minn. R. 8420.0424, subp. 4. All wetlands impacted by this utility project will be addressed by the USCOE Clean Water Act section 404 permit and MPCA Clean Water Act section 401 water quality certification as stated in ¶ 8.

d. Impacts to vernal pool wetland features during bridge construction that could negatively affect the four-toed salamander. **DNR consideration:** There were no Natural Heritage Information System (“NHIS”) species identified within a mile of the project site or documented history of the four-toed salamander in the area. Any vernal pool impacts during construction would be located above the OHWL and are subject

to USCOE Clean Water Act section 404 permit and MPCA Clean Water Act section 401 water quality certification as stated in ¶ 8.

e. Request that only natural and wildlife-friendly products be utilized for erosion control. **DNR consideration:** Permit application materials indicate that 3N Natural Netting will be utilized for erosion control, which is considered natural and wildlife-friendly.

f. Recommended utilizing construction practices that minimize impacts to the resource by applying as many natural materials and practices as are practicable. **DNR consideration:** Enbridge's submitted bridge design, which was completed by a licensed engineer, demonstrates that the structure meets public safety requirements, the installation of riprap is reasonable with minimized encroachment below the OHWL and revegetation of the site is pursuant to reseeding guidelines described in the Environmental Protection Plan (EPP) and the Post Construction Vegetation Management Plan for Public Lands and Waters (VMP). The EPP describes construction procedures and best management practices (BMPs) for the entire Project.

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

26. 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**

27. Enbridge properly submitted the Application for a public waters work permit through MPARS for the construction of a permanent bridge over Willow River in the Northwest Quarter of the Northeast Quarter of Section 31, Township 51 North, Range 24 West, Aitkin County 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. *See* Minn. Stat. § 103G.245 subd. 1 & 3; Minn. R. 6115.0240, subp. 1.

28. Enbridge provided copies of easements procured from landowners for constructing the bridge across the Willow River. DNR Lease No. LMIS010380 has been issued to access the bridge from public land. *See* Minn. R. 6115.0240, subp. 2.

29. The Application contains a brief description of the project; a statement of the overall permanent bridge project purpose and need; engineering design plans; and a hydraulics report. *See* Minn. R. 6115.0240, subp. 3 (A) & (B); Minn. R. 6115.0231, subp. 2.

30. 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 and supplemental materials include this information. Specifically, the Application states that there will be no piers in the watercourse, that the stage increase from the in-place structure to the proposed structure is a 0.15 foot increase (less than the 0.50 foot increase allowed in Minn. R. 6115.0231, subp. 2(B)(1)), and that the bridge will have the required three feet of clearance in a 50-year flood event. The bridge therefore is not anticipated to have detrimental effects on water or land resources. Alternatives to the bridge are discussed below in ¶ 36. The bridge is important for the public safety and welfare because it provides access to a pipeline valve site.

31. Per Minn. R. 6115.0240 subp. 3C(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 proposed bridge will avoid direct impacts to public waters because no impacts are proposed in the channel except a small amount of riprap along the bank. The Application indicates that impacts to public waters 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 site specific engineering design plans. There will be no major change in public waters, so mitigation of impacts is not required.

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

33. The Application and supplemental materials have been provided through GovDelivery to the secretary of the board of the soil and water conservation district and watershed district, as required in 6115.0240 subp. 3(E). *See* ¶14 above.

34. 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 hydraulic capacity data are available to allow the DNR to adequately determine the effects of the proposed bridge crossing. *See* Minn. R. 6115.0231, subp. 2. The information available to the DNR is adequate to determine whether the proposed bridge is reasonable, practical and will adequately protect public safety and promote the general welfare. Minn. Stat. § 103G.315. Enbridge has also submitted adequate information for DNR to determine that the bridge will not cause pollution, impairment, or destruction of the air, water, land or other natural resources. *See* Minn. Stat. § 116D.04, subd. 6.

**B. Consideration of Factors for Bridges in Minn. R. 6115.0230 and Minn. R. 6115.0231, subp. 2.**

35. Minn. R. 6115.0230 and Minn. R. 6115.0231, subp. 2, detail factors that the DNR must consider, if applicable, when considering an application for construction or reconstruction of a bridge on public waters. The DNR's consideration of each of the applicable factors is set forth in greater detail below.

36. Pursuant to Minn. R. 6115.0230, subp. 1, the DNR's goal is to allow crossings of public waters only when less detrimental alternatives are unavailable or unreasonable and where such facilities adequately protect the public health, safety and welfare. Enbridge intends to construct a permanent bridge across the Willow River in order to access a valve site. The Route Permit issued by the PUC requires Enbridge to construct a permanent access road to each valve site to ensure clear and unobstructed access during operations. *See* Pipeline Routing Permit (PUC Docket No. PL-9/PPL-15-137) at 7. Valves protect environmentally sensitive areas in the event of a pipeline spill. Based on review of the submitted Application materials, this proposed activity will cause limited encroachment onto public waters while creating direct access to a valve site that is important for public safety. The alternative to this structure would be constructing a permanent road two to five miles in length on the other side of the river running parallel to Aitkin County Highway 18, passing through portions of the Hill River State Forest. This alternative would have a larger impact on the environment because Enbridge would have to construct a road through the state forest versus using an existing private driveway and constructing a new bridge over the Willow River to provide access to the valve site.

37. Minn. R. 6115.0230, subp. 3 prohibits certain crossings. Prohibited crossings are those that a) will obstruct navigation or create a water hazard, b) will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream, c) involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance or exit conditions; except when a separate permit is obtained according to part 6115.0201, subp. 7., d) will be detrimental to water quality or significant fish and wildlife habitat, e) will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212.2300; or f) will provide private access to an island. Based on the above rule, this crossing is not prohibited. The crossing will not obstruct navigation, increase flood elevations significantly, involve channelization, or provide access to a private island. In addition, the crossing would not be detrimental to water quality due to the construction stormwater permitting requirement of the MPCA. The crossing is not located within significant fish or wildlife habitat and any impacts to threatened and endangered species are subject to the requirements of a threatened and endangered species permit.

38. Minn. R. 6115.0230, subp. 4 states that a permit is not needed if the project meets the criteria in this subpart. The Application does not meet any of these criteria, so a public waters work permit is needed. The drainage area of the Willow River is over five square miles, the bridge is not a low-water crossing, the crossing is not temporary in nature, nor is the proposed project for drain tile or storm sewers. Therefore, Minn. R. 6115.0230, subp. 4 is not applicable and a permit is required.

39. Minn. R. 6115.0230, subp. 5(A) 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.” The proposed bridge consists of a single, 117-foot span steel pony truss structure with a laminated timber deck. The Willow River bridge will bear on helical piles and the embankment at the river crossing will be supported by steel sheet pile, with wing walls perpendicular to the river. Nothing will be placed into the bed of the watercourse, except for Class III riprap that will be installed for erosion control along abutments at a 2:1 slope below the Ordinary High Water Level (OHWL). The EPP also sets forth BMPs for construction of the Willow River bridge as well as other components of the Project.

40. Minn. R. 6115.0230, subp. 5(B) requires DNR to consider whether “adverse effects on the physical or biological character of the waters are subject to feasible and practical measures to mitigate the effects.” Impacts to the public waters are minimized through the installation of a single span structure with a minimal change to the hydraulics or flow characteristics of the watercourse. No pilings or other structural components will be placed in the bed of the public waters, and minimal riprap will be placed under the structure to protect the embankments. No comments were received from DNR Fisheries staff on resource concerns for

aquatic organisms. The proposed project also includes the installation of floodplain culverts through the access road to promote floodplain connectivity. Based on the Application design plans and submitted hydraulics report, the physical and biological impacts to the public waters are minimal and will not require additional mitigation.

41. Minn. R. 6115.0230, subp. 5(C) requires DNR to consider if the proposed crossing is consistent with applicable floodplain, shoreland and wild and scenic rivers management standards and ordinances for the waters involved. The proposed bridge is located within a mapped Federal Emergency Management Agency (“FEMA”) floodplain and meets applicable floodplain regulatory requirements. The 100-year regional flood total stage increase caused by the bridge is 0.15 foot. Enbridge provided a Risk Assessment worksheet as part of its hydraulics analysis completed by LHB Engineering that indicated there would be no additional risk to structures based on this stage increase. The stage increase is minimal as Minn. R. 6115.0231, subp. 2(B)(1) allows for up to one-half foot (0.50’) of stage increase. The project is also proposing installation of floodplain culverts in the roadway to minimize the flood stage over the road. The proposed project would also prevent overtopping of the road by decreasing the flood stage by -0.11 foot compared to the existing road conditions. The Willow River is not a wild and scenic river and no comments were received from the local government unit that administers the shoreland ordinance. The project is consistent with the shoreland and floodplain ordinances for Aitkin County.

42. Minn. R. 6115.0230, subp. 5(D) requires DNR to consider if the proposed crossing is consistent with water and land related management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs. As stated in ¶18 no comments were received from local or regional governments in regard to the proposed bridge. The bridge is consistent with water and related land management plans and programs of local and regional governments.

43. Minn. R. 6115.0230, subp. 5(E) requires that crossings of public waterbasins or public waters wetlands are allowed only when there is no feasible and practical alternative that does not require fill, excavation, or placement of structures in public waters. This rule is inapplicable because the Application proposes a bridge over a public watercourse not a public water wetland or basin.

44. Minn. R. 6115.0231, subp 2(A) requires the hydraulic capacity of the structure to be established by a competent technical study. The sizing shall not be based solely on the size of existing upstream and downstream structures. If a state or federal floodplain information study exists for the area, or a United States Geological Survey (USGS) gaging station is located nearby the area, the hydraulics of the proposed bridge design must be consistent with these data. The Application includes a hydraulics report developed by LHB Engineering and signed by a



licensed engineer (registration number 46584). Based on the hydraulics report, the bridge structure was sized appropriately and the hydraulic capacity of the bridge was established by a competent technical study meeting requirements set forth in Minn. R. 6115.0231, subp. 2(A).

45. Minn. R. 6115.0231, subp. 2(B) requires that crossings comply with local floodplain management ordinances and with provisions of Minnesota Rule 6120.5700, subpart 4, item A. As indicated in ¶17, no comments were received from local government units or land use managers. The bridge is consistent with local floodplain management ordinances. Minn. R. 6120.5700, subp. 4, limits permissible encroachments on the floodplain to those that will not cause an increase in stage of the regional flood of more than 0.50 foot in any one reach or for the cumulative effect of several reaches of a watercourse. Based on the submitted hydraulics report, the total stage height increase during the regional flood is 0.15 feet, less than the allowed 0.50 foot stage increase. Therefore, the requirements of Minn. R. 6120.5700, subp. 4(A) are satisfied.

46. Minn. R. 6115.0231, subp. 2(B)(1) requires that for new crossings, no approach fill for a crossing shall encroach upon a community designated floodway. The bridge is located within a mapped 100-year FEMA floodplain. This area is not a community designated floodway. When a floodway has not been designated, “increases in flood stage in the regional flood of up to one-half of one foot shall be approved if they will not materially increase flood damage potential.” Based on the submitted hydraulics report, the total stage height increase during the regional flood is 0.15 feet. Additionally, LHB Engineering included a Risk Assessment for Encroachment Design form that indicated no increased risk to structures. DNR has reviewed the location of the structure as compared with downstream properties, and the 0.15 foot increase in water surface elevation will not impact downstream properties as the properties are higher in elevation than the water surface elevation. Based on information provided, the project will not materially increase flood damage potential or flood stages above what is allowed in rule, so the Application is consistent with Minn. R. 6115.0231, subp. 2(B)(1).

47. Minn. R. 6115.0231, subp. 2(B)(2) requires that for replacement of existing crossings, if the existing crossing has a swellhead of one-half of one foot or less for the regional flood, the replacement crossing shall comply with the provision for new crossings in subitem (1). If the existing crossing has a swellhead of more than one-half of one foot for the regional flood, stage increases up to the existing swellhead shall be allowed if field investigation and other available data indicate that no significant flood damage potential exists upstream from the crossing based on analysis of data submitted by the applicant. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in subitem (1). Since the Application is for a new crossing and is not a replacement of an existing crossing, Minn. R. 6115.0231, subp. 2(B)(2) is not applicable. Though there is an existing structure at this location, it is not permitted and is not owned by the applicant, and therefore DNR deems the Application to be for a new crossing. The existing structure will be

removed by Enbridge within one year of the completion of the new bridge crossing per a condition in the Permit.

48. Minn. R. 6115.0231, subp. 2(B)(3) requires that decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development of urban densities shall be no lower than two feet below the flood protection elevation as defined in part 6120.5700, subpart 5, unless it can be shown that alternative routes or access can be provided during the regional flood. Since the Application is for a new crossing that is not in an urban area or on a major transportation route, Minn. R. 6115.0231, subp. 2(B)(3) is not applicable.

49. Minn. R. 6115.0231, subp. 2(C) requires that the structure provide for game fish movement. DNR Fisheries staff did not indicate that the project would impact game fish movement and did not comment on the hydraulic report submittal. The bridge design plans do not require any instream supports that could impact flow dynamics or cause scour. The hydraulics report also shows flows at a two-year event (channel forming flows) will be 2.55 feet per second. Flows at this velocity will still provide fish movement, therefore the project is consistent with Minn. R. 6115.0231, subp. 2(C).

50. Minn. R. 6115.0231, subp. 2(D) requires that the structure will not obstruct reasonable public navigation. For bridges over public watercourses, three feet above the calculated 50-year flood stage ordinarily satisfies navigational clearance requirements. The submitted hydraulics report states that the 50-year flood headwater elevation is 1240.72 feet and the bridge low member is 1244.00 feet, allowing for 3.28 feet of clearance. The project is consistent with Minn. R. 6115.0231, subp. 2(D).

51. Minn. R. 6115.0231, subp. 2(E) requires that the any project proposed near an existing or proposed segment of the state trails system should be consistent therewith. The proposed crossing is not located on a state water trail nor near a State trail. Therefore, Minn. R. 6115.0231, subp. 2(E) is not applicable.

52. Minn. R. 6115.0231, subp. 2(F) applies to bridges and walkways to islands and is not applicable to the Application.

53. As outlined in ¶¶ 35-52-54, the DNR has considered the Application under Minn. R. 6115.0230 and Minn. R. 6115.0231 as well as Minn. Stat. § 103G.245. Permit Application No. 2019-0463 satisfies the applicable regulatory requirements thereunder.

### **C. The Proposed Public Water Works Permit Satisfies the Prohibition on State Actions Affecting the Environment**

54. 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.”

Minn. Stat. § 116D.04, subd. 6.

55. “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.

56. In reviewing the administrative record, including the FEIS and the Application, DNR considered the quality and severity of any adverse effects of the proposed action on the Willow River, including any potential long-term adverse effects, whether this public water is unique or rare, the potential significant consequential effects of the proposed structure on other natural resources, and the direct and consequential impacts of the proposed structure on the environment.

57. As detailed herein, the proposed bridge, 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.

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

59. 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 federal wetlands permit issued by the USCOE. Wetland monitoring will be required under these federal wetland requirements.

60. Compliance with these regulatory requirements serves to ensure that the proposed structure under the public waters work permit will not result in pollution, impairment, or destruction of natural resources. The construction of the Willow River bridge will not cause pollution, impairment, or destruction because the single span structure will have minimal impact on the watercourse, BMPs will further reduce effects caused by construction, and the bridge design complies with public waters work permit regulations.

61. As outlined above, the DNR has considered the proposed bridge under the permit in accordance with MEPA, and determines that the proposed bridge 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 delegated to the DNR the authority to develop a water resources conservation program for the state that includes the “conservation, allocation, and development of waters of the state for the best interests of the people.” Minn. Stat. § 103G.101, subd. 1. Similarly, the Legislature directed the DNR to adopt rules 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 construction of the Willow River bridge requires a public waters work permit. *See* Minn. Stat. § 103G.245, subd. 1; Minn. R. 6115.0230, 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 works 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. 6115.0230, .0231.

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. Any application information required under Minn. R. 6115.0230 and 6115.0231 and 6115.0240 not discussed herein are waived as unnecessary or inapplicable.

11. The crossing for Willow River will be permanent and be constructed pursuant to the issued permit and conditions set forth in the permit. Permit application materials submitted by Enbridge for Permit Application No. 2019-0463 meet conditions and criteria set forth in Minn. R. 6115.0240, .0230, .0231, and Minn. Stat. § 103G.245.

12. Permit Application No. 2019-0463 satisfies the requirements set forth in Minn. Stat. § 103G.245 and Minn. R. 6115.0150-.0280.

13. Pursuant to Minn. Stat. § 103G.315, subd. 6, Enbridge has met its burden of proving that its plans for the Willow River bridge are reasonable, practical, and will adequately protect public safety and promote the public welfare.

14. Issuance of the permit for the Willow River bridge is not prohibited by Minn. Stat. § 116D.04, subd. 6 because construction and operation of the bridge will not cause pollution, impairment or destruction of the Willow River.

15. 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.

16. 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 any public hearing on the Application for Public Waters Work Permit No. 2019-0463 pursuant to Minn. Stat. § 103G.311, subd. 4.

2. Based upon all the files, records, and proceedings in this matter and upon the DNR's Findings of Fact and Conclusions, Public Waters Work Permit No. 2019-0463 is hereby issued to Enbridge for construction, operation, and maintenance of the Willow River bridge 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