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**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF CLEARWATER**

**NINTH JUDICIAL DISTRICT**

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**State of Minnesota,  
Plaintiff,**

**Case No. 15-CR-22-532**

**v.**

**Enbridge Energy, Limited Partnership,  
Defendant.**

**INTERVENTION IN  
CONTINUANCE FOR DISMISSAL AND WAIVER OF RIGHTS**

**I. INTERVENTION**

Pursuant to the Minnesota Environmental Rights Act, Minn. Stat. §116B.09, subd. 1 (2022), the undersigned Intervenors are natural persons residing within the State of Minnesota, and/or partnerships, corporations, associations, organizations or other entities having shareholders, members, partners, or employees residing within the State of Minnesota.

Intervenors provides herein a verified pleading showing that actions of the Defendant Enbridge Energy [hereinafter Enbridge] and the Minnesota Department of Natural Resources [hereinafter MDNR] involves conduct that has caused and continues to cause additional pollution, impairment, or destruction of the air, water, land or other natural resources located within the state. “Pollution, impairment, or destruction” means “any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit . . . or any conduct which materially adversely affects or is likely to materially adversely affect the environment.” Minn. Stat. § 116B.02, subd. 5 (2022). “Natural resources” includes “all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural

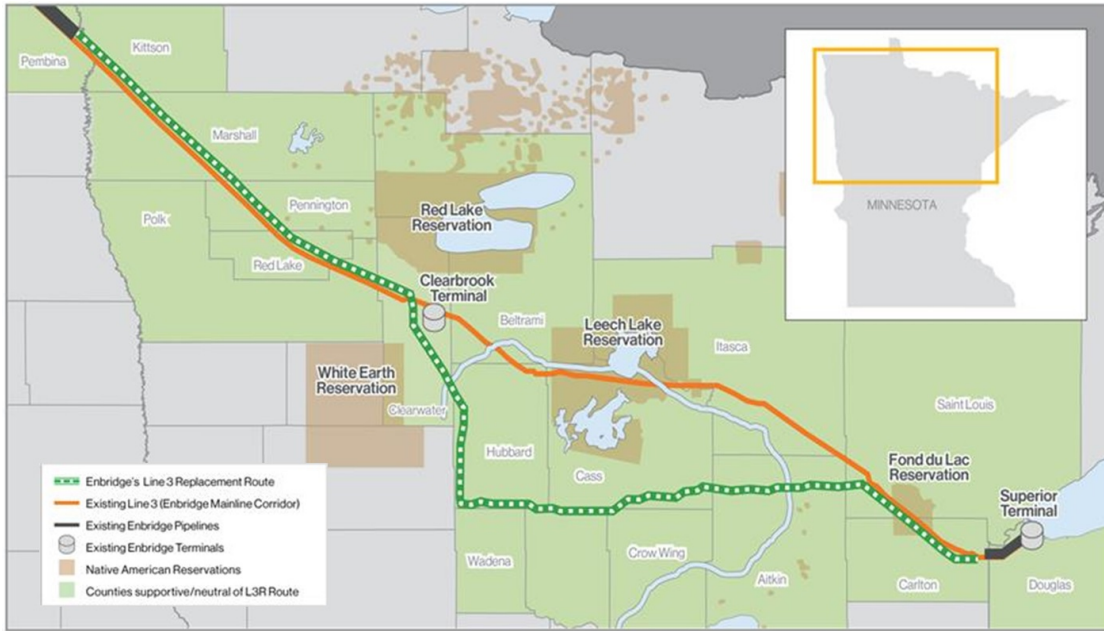
resources when owned by any governmental unit or agency.” Minn. Stat. § 116B.02, subd.4 (2022).

Enbridge Line 3 Replacement Project [hereinafter Enbridge Line 3] is intended to repair a 1,097-mile crude oil pipeline extending from Edmonton, Alberta to Superior, Wisconsin built in the 1960s. The Enbridge Line 3 increased the diameter of the pipeline along the route for 13 miles in North Dakota, 337 miles in Minnesota, and 14 miles in Wisconsin.<sup>1</sup> The impacted public watercourses, streambanks, wetlands, groundwater, floodplains, backwaters, and private and public lands from northwestern Minnesota, near Hallock, to northeastern Minnesota, near Wrenshall are "natural resources located within the state." Minn. Stat. §116B.02, subd. 4; §116B.09, subd. 1 (2022). The route of the replacement Enbridge Line 3 pipeline is illustrated below:<sup>2</sup>

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<sup>1</sup><https://www.enbridge.com/projects-and-infrastructure/public-awareness/minnesota-projects/line-3-replacement-project> (last visited 10 October 2023).

<sup>2</sup><https://www.enbridge.com/projects-and-infrastructure/public-awareness/minnesota-projects/line-3-replacement-project> (last visited 10 October 2023).



By this notice, Intervenor intervenes in all proceedings related to the Proposed Project. This includes but is not limited to any proceedings, decisionmaking processes by the courts, the Minnesota Attorney General, MDNR, and/or local, county, state and federal agencies, any public decisionmaking processes, and any other action under Minn. Stat. chapters 84, 84A, 89A, 94, 103A - 114B, 114E, 115, 116, 116B, 116D, 116G, 116I and other applicable statutes and their relevant implementing regulations. Upon intervention, Intervenor becomes a party to these proceedings, entitled to fully participate in the legal processes, including rights to notice, hearing, and opportunity to appeal. Please direct all notices and copies of all documents related to these proceedings to Karuna Ojanen using the contact information below.

## **II. THE INTERVENORS**

INTERVENORS are natural persons residing in the State of Minnesota who may also be members of nonprofit environmental organizations asserting a public interest in, *inter alia*, the Rights of Nature; respect and honoring the usufructuary rights and values of the affected Indian Nations; environmental justice; the local physical and economic effects of climate change; the continued desecration of wetlands, peat bogs, forests, animal habitat, forests, surface and groundwaters in northern Minnesota along the Enbridge Line 3 pipeline, and the risk of leakage of tar sands oil from the Enbridge Line 3

pipeline. All these issues require comprehensive review and monitoring of the construction damages that include: numerous aquifer breaches, water appropriations without permits, destruction of peat bogs, and the change of wetland types, and ecological disturbances of Manoomin and water-dependent ecosystems, all created by Enbridge Line 3 in violation of Minn. Stat. §103G.141 (2022).

Before any dismissal of the pending charges against Enbridge can be considered, the damaged aquifers, water-dependent ecosystems, and Minnesota's water resources require a thorough assessment and understanding of the cumulative local and remote effects, the social costs, and comprehension of the Rights of Nature under the Minnesota Environmental Rights Act<sup>3</sup> and the Minnesota Environmental Policy Act<sup>4</sup> to create and maintain conditions under which human beings and nature can exist in productive harmony.<sup>5</sup>

Resilient Indigenous Sisters Engaging (R.I.S.E.) Coalition is a non-profit group of indigenous women with a vision to call upon others to rise and protect all that is sacred. Their mission is to educate others about climate change, environmental protection, water protection, and treaty rights to empower and inspire our communities to take action for the protection of our environment and the people. R.I.S.E. Coalition focuses on providing opportunities for our communities to participate in cultural activities for healing due to multi-generational historical trauma in hopes to bring more people to action and onto a positive life path. R.I.S.E. Coalition intervenes on behalf of itself and its members who reside in Minnesota.

DEFEND WATER is an Indigenous-Led, non-profit organization that gathers air and ground data using photography, water and soil testing, has a fleet of drones, produces video documents of the hours and hours of accumulated data. Defend Water collates and shares this knowledge in meetings with the public and federal, state and international

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<sup>3</sup>Minn. Stat. §§116B.01-.13 (2022).

<sup>4</sup>Minn. Stat. §§116D.01-.11 (2022).

<sup>5</sup>Minn. Stat. §§ 116B.01, 116D.02 subd. 1 (2022).

agencies, and teaches classes of the environmental impacts of the Enbridge Line 3 construction. Defend Water intervenes on behalf of itself and its members who reside in Minnesota.

The MINNESOTA WELL OWNERS ORGANIZATION (MNWOO) is an advocacy and education non-profit organization created to provide, *inter alia*, advocacy to those who own and/or rely on private wells for their drinking water and to preserve, protect, and restore the quality and quantity of Minnesota's water resources and to ensure the safety of those who use them. MNWOO's partners include the Minnesota Groundwater Association, various local Soil and Water Conservation Districts (SWCDs), and state and local health agencies that have a wide range of interests but focus on water resources. Partnership programs offer free nitrate and chloride screenings of private well water across the state. Well owners attending water clinics get their screening results and can consult with geologic, health, and water professionals about their drinking water, wells, and water systems. MNWOO intervenes on behalf of itself and its members who reside in Minnesota.

Intervenors herein reserve the right to add more Intervenors as the more individuals and organizations become aware of the magnitude of the destruction of Minnesota's public waters and public lands along the Enbridge Line 3 pipeline.

### **III. STIPULATION OF FACTS**

INTERVENORS concur with the Stipulation of Facts set forth in the Continuance for Dismissal and Waiver of Rights, Case No. 15-CR-22-532 filed 28 October 2022 with the Court.

### **IV. THE POLLUTION, IMPAIRMENT, AND DESTRUCTION OF THE WATER, LAND AND OTHER NATURAL RESOURCES LOCATED IN THE STATE**

#### *CITED AQUIFER BREACHES BY ENBRIDGE*

To date and according to the MDNR website, there have been at least three aquifer breaches by Enbridge, as follows:

*In constructing the Project, Enbridge breached an artesian aquifer and caused uncontrolled groundwater discharges at or near the Enbridge Energy Clearbrook Terminal property ("Clearbrook Site"). Enbridge*

*caused this uncontrolled groundwater discharge without a water appropriation permit for such appropriation in violation of state law. Enbridge's actions, which resulted in the uncontrolled groundwater discharges. **As of January 19, 2022, the aquifer breach had been active for 361 days with a total volume of water discharge estimated to be 72,800,000 gallons.** Ongoing monitoring of the Clearbrook Site continues to assess the effectiveness of the repair.<sup>6</sup> [emphasis added]*

*On September 1, 2022, Enbridge informed DNR that a small groundwater seep had emerged near the Clearbrook Site repair at an estimated rate of 1/2 gallons per minute. Enbridge submitted a Supplemental Groundwater Investigation Plan (2022 Clearbrook Supplemental Investigation Plan) for DNR review on September 9, 2022. DNR review of the 2022 Clearbrook Supplemental Investigation Plan is ongoing.<sup>7</sup>*

*LaSalle Creek is a designated trout stream located in Hubbard County surrounded by terraced wetlands fed by spring seeps and, consequently, is largely designated as wetland, particularly on the east side of the creek ... On or about August 2, 2021, during construction through the river valley's eastern slope, sheet piling was installed to a depth of approximately 27 feet ... [O]n that same day, an Independent Environmental Monitor ("IEM") noted groundwater upwelling ... On August 6, 2021, Enbridge notified DNR, by email, of the uncontrolled flow at the LaSalle Creek Site, and DNR approved a Corrective Action Plan on September 3, 2021 ... On July 11, 2022, nearly seven months after Enbridge reported that groundwater discharge had stopped, Enbridge informed the DNR that groundwater was observed at the surface in the area of the LaSalle Creek Site corrective action at an estimated rate of 5-10 gallons per minute. DNR determined that Enbridge is withdrawing or removing water from its source in violation of Minn. Stat. §103G.271 (2022). Enbridge estimates that, as a result of the aquifer breach and the resulting uncontrolled flow, it has appropriated **9,800,000 gallons of water from August 2, 2021 through December 20, 2021**, which exceeds the threshold for which a permit is required. DNR determined that the uncontrolled groundwater flow was a waste of water and is not a reasonable use of water authorizable under an after-the-fact*

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<sup>6</sup>Comprehensive Enforcement Resolution Agreement for Clearbrook and LaSalle Creek, p.2, <https://files.dnr.state.mn.us/features/line3/2022-10-17-lasalleclearwater-agreement-fullyexecuted.pdf> (last visited 07 October 2023) [hereinafter the Clearbrook-LaSalle Agreement].

<sup>7</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 2.

*water appropriation permit in violation of Minn. Stat. §1031.103 (2022). (emphasis added).*

*On or about September 10, 2021, Enbridge Line 3 construction breached an artesian aquifer at Mile Post (MP) 1102.5 resulting in an uncontrolled upwelling of groundwater entering public land and land of the Fond du Lac Band of the Ojibwe nation. Enbridge notified the Fond du Lac Band of the Ojibwe Nation and MDNR. On October 1, 2021, moreover, DNR received notification that artesian flowing conditions were encountered while installing a monitoring bore hole. In January 2022, Enbridge reported the weekly average rate of discharge was 554 gallons per minute from the seep area and relief well groundwater pumping and that as a result of the aquifer breach and the resulting uncontrolled flow, it has appropriated **263,100,000 gallons of water** from September 10, 2021, through April 7, 2022. Enbridge reported that it had allegedly repaired the aquifer breach. Ongoing monitoring of the site is occurring to confirm.<sup>8</sup>*

Under the Clearbrook-LaSalle Agreements, Enbridge agreed to pay \$165,400 for lost groundwater resources,<sup>9</sup> pay \$100,000 to MDNR for monitoring costs,<sup>10</sup> pay \$20,000 for the aquifer breach at LaSalle Creek,<sup>11</sup> pay \$200,000 in mitigation for impacts caused by aquifer breach at LaSalle Creek Site,<sup>12</sup> and pay \$610,00 in financial assurance to MDNR.<sup>13</sup> Under a previous enforcement action issued by MDNR on 16 September 2021 for Clearbrook Terminal, Enbridge will or has paid \$3,320,000 in penalties, mitigation, and monitoring funds, \$40,000 as compensation to the state for loss of groundwater resources, and will pay for additional future losses.<sup>14</sup>

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<sup>8</sup>Comprehensive Enforcement Resolution Agreement for Mile Post 1102.5, pp. 1-3, <https://files.dnr.state.mn.us/features/line3/2022-10-17-11025-comp-enf-agreement-fullyexecuted.pdf> (last visited 07 October 2023) [hereinafter MP 1102.5 Agreement).

<sup>9</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 5.

<sup>10</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 6.

<sup>11</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 6.

<sup>12</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 6.

<sup>13</sup>Clearbrook LaSalle Agreement, *supra* note 6 at 6.

<sup>14</sup><https://www.dnr.state.mn.us/line3/index.html> (last visited 07 October 2023)

Under the MP 1102.5 Agreement, Enbridge agreed to pay \$150,000 for monitoring costs on-reservation and off-reservation peatlands, streams, and lakes; pay a penalty of \$20,000 to MDNR, pay \$1,305,000 to the Fond du Lac Band of the Ojibwe Nation, and pay \$300,00 to MDNR.<sup>15</sup>

The MPCA considered violations of its water quality certification through on-site investigations, independent environmental monitors, and required Enbridge to pay \$2,395,000 to the State of Minnesota; fund \$2,625,000 to complete several supplemental environmental projects in affected watersheds along the Enbridge Line 3 pathway. MPCA placed additional requirements on Enbridge during construction, including increasing the number of independent environmental monitors and requiring turbidity curtains at river crossings as a preemptive barrier to contain any inadvertent drilling releases.<sup>16</sup>

As of October 2022, Minnesota state agencies and the Fond du Lac Band announced enforcement actions resulting in \$11,000,000 from Enbridge in payments, environmental projects, and financial assurances.<sup>17</sup>

#### *Release of Enbridge from liability*

MDNR, moreover, fully and completely released Enbridge and its individuals or organizational affiliates, subsidiaries, successors, agents, and assigns from liability for any conduct known to the MDNR on or before 17 October 2022 related to the Clearbrook and LaSalle Creek Sites that MDNR could have pleaded in a civil action based on written information in the possession of the MDNR as of that date, provided that MDNR did not have information sufficient to identify such further violations in their possession as of that date. MDNR further agreed not to exercise any administrative, legal, or equitable remedies against Enbridge or make any referrals to other agencies related to the any conduct of which MDNR was aware. MDNR states that it is unaware of any additional

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<sup>15</sup>MP 1102.5 Agreement, *supra* note 8 at 5-7.

<sup>16</sup><https://www.pca.state.mn.us/news-and-stories/minnesota-state-agencies-and-fond-du-lac-band-announce-enbridge-enforcement-resulting-in-11m-in> (last visited 08 October 2023).

<sup>17</sup><https://www.pca.state.mn.us/local-sites-and-projects/enbridge-line-3-pipeline-replacement-project> (last visited 08 October 2023).



facts that create the basis for criminal liability and therefore will not refer or seek additional criminal charges against Enbridge based on the facts known to it as of 17 October 2022.<sup>18</sup>

The Clearbrook-LaSalle and the MP 1102.5 Agreements also provide that Enbridge shall immediately notify MDNR of any additional uncontrolled groundwater flows attributable to construction of the Project. All newly discovered occurrences of uncontrolled flow would require investigation of those site(s) in coordination with MDNR and other applicable agencies.<sup>19</sup> If additional aquifer breaches are identified, the MDNR expressly reserved the right to pursue further enforcement, restoration, or mitigation related to those breaches.<sup>20</sup>

#### *OTHER AQUIFER BREACHES BY ENBRIDGE*

Thermal imaging is a reliable and scientifically acceptable method by which differences in temperature can be rapidly and accurately detected and mapped. Along Enbridge Line 3, for instance, when there is a breach of an aquifer, the 45 degree groundwater is easily detected as it erupts through frozen ground and the snow. In the heat of summer, the upwelling groundwater will be cooler than the ambient surface temperature.

Characterizing groundwater flow can pinpoint groundwater discharge allowing for the assessment of ecosystem dependence, contamination, and the seepage influences of the water budgets of watersheds, lakes, streams, and wetlands. Groundwater flow or flux to the surface from an aquifer can be difficult to see in the visual spectrum with air photography or direct observation, however it is easy, and accurately measured with thermal imaging. The combination of thermal imaging, drone videos, and field visits with trained personnel reveals how surface water and groundwater are connected in a watershed and further reveals how hydrologic manipulation can alter the landscape and

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<sup>18</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 8-9; MP 1102.5 Agreement, *supra* note 8 at 9.

<sup>19</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 9; MP 1102.5 Agreement, *supra* note 8 at 9.

<sup>20</sup>Clearbrook-LaSalle Agreement, *supra* note 6 at 9; MP 1102.5 Agreement, *supra* note 8 at 9.

how each element will affect the other.<sup>21</sup> Thermal-infrared imagery has been proven to delineate groundwater seepage and has thermal signature on the surface water.<sup>22</sup>

Intervenors herein submit evidence of at least eight aquifer breaches by Enbridge in Clearwater, Polk, Hubbard, and Carlton counties; some known to MDNR and to Enbridge. A group comprising Waadookawaad Amikwag (*Those Who Help Beaver*), Sierra Club North Star Chapter, R.I.S.E. Coalition, MN350, Honor the Earth and others conducted thermal imaging using drones to detect possible aquifer breaches along the Enbridge Line 3 pipeline.

The thermal imaging project discovered 45 sites with high-resolution images of suspected uncontrolled flow within the Enbridge Line 3 right-of-way and the pipeline trench. When the thermal image indicated a change in temperature and possible uncontrolled flow of groundwater, Waadookawaad Amikwag volunteers trained in field observation would visit the site, take soil and water measurements in the field, collect water samples for laboratory analysis under chain-of-custody, take photographs, drone photos, and field notes. Eight sites on public lands or lands with landowners' permission were identified with thermal anomalies and verified by field observations, a brief summary of each is presented below. More detailed studies are included as the Nonpermitted Uncontrolled Flow Site Summary Sheets, pages 14-54, of the Verified Statement of Jeffrey Broberg, filed herein.

### **Hay Creek**

Hay Creek flows between Island Lake and Two Inlets Lake in Hubbard County. Hay Creek, as with many of the sites herein, is a Manoomin waterway protected by the usufructuary treaty rights on lands ceded to the United States wherein "[t]he privilege of

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<sup>21</sup>O. Ozotta, P.J. Gerla, *Mapping Groundwater Seepage in a Fen Using Thermal Imaging*, 11.29 GEOSCIENCES 2021. <https://doi.org/10.3390/geosciences11010029>. See also Tobias Schuetz, Markus Weiler, *Quantification of localized groundwater inflow into streams using ground-based infrared thermography*, 38 GEOPHYSICAL RESEARCH LETTERS L03401 (2011). doi:10.1029/2010GL046198; Bjørn Kløve et al., *Groundwater dependent ecosystems. Part I: Hydrological status and trends*, 14 ENVIRONMENTAL SCIENCE & POLICY 770-781 (2011).

<sup>22</sup>Ozotta et al., *supra* note 21 at 2-3.

hunting, fishing, and gathering the wild rice [Manoomin], upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States."<sup>23</sup> Thermal imaging in 2021 and on-the-ground field work suggests an aquifer breach having at least three groundwater upwelling locations.

### **LaSalle Creek**

LaSalle Creek is a designated trout stream and Enbridge Line 3 breached an aquifer east of the creek. This violation was included in the 2022 enforcement, yet it remains unclear whether Enbridge provided a full disclosure of details of the aquifer breach. To cross LaSalle valley, Enbridge clear-cut a swath of forest, forested wetlands, and shrub wetlands 90 feet wide and 3200 feet long. They then punctured a confined aquifer using corrugated steel sheet piling ~28 feet deep which, when removed, resulted in uncontrolled flow of water from the land. While Enbridge's original corrective action plan noted seven seeps, thermal flyover data showed upwards of a dozen upwelling spots in this area. Multiple discussions between Waadookawaad Amikwag and MDNR occurred from February 2023 to April 2023 regarding the remediation work and further damages at this location. MDNR has directed Enbridge to conduct monitoring.

### **Moose Lake**

Moose Lake in Aitkin County is connected to the Moose River, which flows into the Willow River and then the Mississippi. Moose Lake is a productive Manoomin lake with public water access. The Enbridge Line 3 pipeline crosses through the lake basin near the southern shore. There is an aquifer breach consisting of uncontrolled and unpermitted groundwater appropriations. Moreover, the likelihood of this breach occurring was knowable and possibly known by Enbridge before construction commenced. Waadookawaad Amikwag independently identified this as an aquifer breach using thermal flyover imagery in as early as November 2021 and its own ongoing fieldwork. State agencies later confirmed the assessment. The confined aquifer is leaking at an unknown rate into the riparian and littoral wetlands, causing a change in water

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<sup>23</sup>Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 177 (1999).

chemistry and quality in that location. MDNR has directed Enbridge to conduct monitoring. State agencies have approved Enbridge's plan to monitor groundwater and surface waters in this area; this includes the installation of several long-term groundwater monitoring wells. Unfortunately, the terrain and ecology are very sensitive and complex, making it impossible to accurately measure the flow of water leaving the confined aquifer and entering the wetlands and lake.

### **Mississippi River, 1<sup>st</sup> Crossing**

Mississippi River Crossing No. 1 in Clearwater County crosses at County Road 40 (the Great River Road), near pipeline milepost 941. The site has a history from July 2021 of frac-outs, surface contamination from drilling mud and other chemicals. Enbridge engineers, state agencies, and contractors have ignored known and revealed geotechnical risks that the borings were terminated above proposed depths due to difficult drilling conditions and borehole collapse. The geotechnical report further stated that the sands and gravels may tend to collapse during the HDD [Horizontal Directional Drilling] process. Following the completion of the HDD, the removal of the 30-foot sheet piles penetrated a confined aquifer. Minnesota's agencies have never addressed the litany of design flaws, boring collapse, mud loss, and water contamination at this site. Enbridge has never conducted a thorough geologic investigation. Except for the thermal imaging, drone records, field observations, and sample collection of water data by the Waadookaand Amikwag field monitors, there has been no effort to assess, repair, or mitigate the ongoing damages, despite MDNR directing Enbridge to conduct monitoring.

### **Spring Branch**

The Enbridge Line 3 pipeline crosses Spring Branch Creek in Hubbard County just 0.15 miles before the creek flows into Roosevelt Lake. Thermal and field evidence show that groundwater is upwelling at this location. This site was reported by a local resident to Waadookaand Amikwag for investigation. This is a possible a confined aquifer breach from thermal imaging and field work noting differences in water temperature and water chemistry between the groundwater and the surface water, in which case Spring Branch is an uncontrolled and unpermitted groundwater appropriation.

### **Trail at 360**

The Enbridge Line 3 pipeline crosses 360<sup>th</sup> Avenue in Polk County. Thermal fly over imagery was collected in November 2021. The most recent visits to the Trail at 360 indicate an unpermitted and uncontrolled upwelling of groundwater, i.e., an aquifer breach.

### **Trail North Gully**

The Enbridge Line 3 pipeline is north of Trail North Gully in Polk County and near the Gully Fen Scientific and Natural Area. Thermal fly over imagery was collected in November 2021. The most recent visits to the Trail North Gully site indicate an unpermitted and uncontrolled upwelling of groundwater, i.e., an aquifer breach.

### **Walker Brook South**

Walker Brook is a tributary of the Clearwater River located southeast of Bagley, MN in Clearwater County. The riparian area is mostly undisturbed wetlands and peatlands within 400 acres of a county memorial forest. Thermal fly over imagery was collected in November 2021. Enbridge reported in 2022 that there is a “groundwater issue,” i.e., the aquifer has been disrupted and is draining. Despite several attempts by Enbridge, the Walker Brook South site has yet to be repaired while extensive areas of peat and riparian wetlands are permanently impacted. MDNR has directed Enbridge to conduct monitoring.

In the Agreement to Continuance for Dismissal, Enbridge agreed to remain law abiding and of good behavior and not knowingly engage in conduct that would violate Minn. Stat. §103G.141 (2022). Yet, Intervenors herein provide evidence that Enbridge has undertaken or procured another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state in violation of or in excess of authority granted under a permit issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved or whether the act involved would have been permitted had a proper application been filed in violation of Minn. Stat. §103G.141, subd. 1(1) and (2) (2022).

Enbridge has also violated Minn. Stat. 103G.281(2022) by appropriating or using waters of the state without measuring and keeping a record of the quantity of water used or appropriated.

## **VI. RELIEF REQUESTED**

“[N]o conduct [by Enbridge] shall be authorized or approved which does, or is likely to have such effect 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. §116B.09, subd. 2 (2022).

Enbridge Line 3 crosses 182 non-public wetlands on public lands,<sup>24</sup> and crosses 67 public waters which includes at least 8 protected trout streams,<sup>25</sup> and crosses 182 parcels of public lands.<sup>26</sup>

Intervenors request the Case No. 15-CR-22-532 not be dismissed but that the Court determine that one or more conditions of the Continuance for Dismissal and Waiver of Rights have not been met, and the terms of the Agreement and related agreements between Enbridge and agencies of the State have been violated. Specifically, Enbridge has not remained law abiding and in good behavior, and knowingly engages in conduct that violates Minn. Stat. §103G.141 (2022) by appropriating waters of the state without previously obtaining or in excess of a permit.

Pursuant to Minn. Stat. §116B.09, subd. 3 (2022) Intervenors further ask the Court to order the Attorney General, MDNR, and MPCA to review the evidence of the additional breaches presented herein; conduct caused by Enbridge Line 3 construction

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<sup>24</sup><https://files.dnr.state.mn.us/features/line3/utility-crossing-licenses/public-land-g.pdf> (last visited 08 October 2023).

<sup>25</sup><https://files.dnr.state.mn.us/features/line3/utility-crossing-licenses/public-water-a.pdf> (last visited 08 October 2023).

<sup>26</sup><https://files.dnr.state.mn.us/features/line3/utility-crossing-licenses/public-land-a.pdf> (last visited 08 October 2023).

that has caused and is likely to cause pollution, impairment, and destruction of the air, water, land, and other natural resources located within the state.

Intervenors request that the Minnesota Attorney General file an amended criminal complaint setting forth the additional counts related to the additional breaches set forth herein.

Intervenors herein submit evidence of thermal imaging and field notes relating to the illegal appropriation of state waters. In violation of Minn. Stat. §103G.271, subd. 1, Enbridge has been appropriating and using waters of the state without a water-use permit from the commissioner.

Intervenors herein submit evidence of thermal imaging and field notes relating to the illegal appropriation of state waters. In violation of Minn. Stat. §103G.275, subd. 1 (2022), Enbridge has not only increased pumping capacity, but also made major changes to the Enbridge Line 3 pipeline installation without first applying in writing for, and obtaining, the written permit of the commissioner. Moreover, in certain of these aquifer breaches, Enbridge did not file a water use data statement with the commissioner in violation of Minn. Stat. §103G.275, subd. 2 (2022).

Intervenors herein submit evidence that Enbridge is in violation of Minn. Stat. §§103G.271 and 103G.275 (2022), and any rules adopted under those sections. Pursuant to Minn. Stat. §103G.299, subd. 1, (2023) Intervenors ask the Court to order the MDNR to issue an order requiring correction of the Enbridge violations disclosed herein.

Minn. Stat. §116B.09, subd. 2 (2022) further mandates that “[e]conomic considerations alone shall not justify such conduct.” The payments of a penalty does not preclude the use of further enforcement provisions in connection with the violation for which any penalty was assessed. Minn. Stat. §103G.299, subd. 10 (2023). Thus, rather than assess and collect yet more penalties and financial reassurances from Enbridge, Intervenors request that the permits for public land crossings and public water crossings for the Enbridge Line 3 project be revoked.

Moreover, in accordance with Minn. Stat. §103G.2991, subd. 3 (2023) Intervenors request the Court order the Attorney General to declare that Enbridge’s repeated and

ongoing violations of the Minn. Stat. Chapter 103G, and the orders, stipulations agreements, schedules of compliance, and permits generated thereof constitute a public nuisance. Intervenor asks the Court to order the Attorney General to enjoin Enbridge from appropriating public waters of Minnesota.

Intervenor requests the Attorney General and the state agencies exercise increased monitoring and oversight of Enbridge Line 3 for the paramount protection of Minnesota's public lands and public waters.

Intervenor further requests the Court order MDNR to assess the maximum penalties under Minn. Stat. § 103G.299, subd. 2 (2023) based on the actual and the potential harm and deviation from compliance.

Pursuant to Minn. Stat. § 103G.287, subd. 3 (2023), Intervenor requests the Court to order the Attorney General and MDNR to protect groundwater resources and consider the sustainability of the breached aquifers, the current and projected water levels, cumulative withdrawal rates from the resource on a monthly or annual basis, water quality, the protection of ecosystems, and the ability of future generations to meet their own needs. The commissioner may consult with the commissioners of health, agriculture, and the Pollution Control Agency and other state entities when determining the impacts on water quality and quantity.

Intervenor requests that the MDNR monitor and confirm the community service project consisting of funding up to \$60,000 for ongoing cattail management as directed by MDNR at the Viking Strip Calcareous Fen (Fen ID No. 14379, Marshall County), Gully 23 Fen (Fen ID No. 16307, Polk County), and Gully 25 Fen (Fen ID No. 16312, Polk County) through its completion.

The destruction of the land and waters and Nature caused by Enbridge Line 3 is personal to those residents of Minnesota having property that abuts and look onto the Enbridge Line 3 project from their homes. Ancestral lands are destroyed; precious resources are destroyed; spiritual and cultural values are denigrated. There is accumulated anxiety and fear of additional breaches and pipeline leaks. Intervenor asks the Court to acknowledge this fear and anxiety which should also be personal to the executives of



Enbridge who knew or should have known of the previous breaches and the breaches disclosed herein. The Continuance for Dismissal and Waiver of Rights, ¶ 1 states the maximum penalty for a misdemeanor is 90 days imprisonment and a \$1,000 fine. Thus, Intervenor ask the Court to find those executives of Enbridge guilty of multiple misdemeanors; specifically Intervenor ask the Court to order the imprisonment of those Enbridge executives for 90 days or an otherwise definite term pursuant to Minn. Stat. §609.125, subd. 1 (2022), and to order each Enbridge executive to individually pay \$1000 for each aquifer breach in Minnesota along the Enbridge Line 3 pipeline corridor. It is apparent that paying millions of dollars to the State of Minnesota has not been a deterrent to Enbridge; instead it knowingly appropriates waters of the state without a permit and/or in excess of authority granted under an issued permit.

Pursuant to Minn. Stat. §609.125, subd. 2 (2022), Intervenor ask the Court to order Enbridge to pay restitution to each landowner having property that abuts each aquifer breach.

Intervenor request the Court to order Enbridge to reimburse Intervenor for the expenses incurred to obtain the thermal images and field notes herein.

Intervenor request the Court to order Enbridge to pay reasonable attorney fees for the filing this Intervention.

14 October 2023

/s/Karuna Ojanen  
Karuna Ojanen  
Legal Officer for Intervenor MNWOO,  
R.I.S.E., Defend Water

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