

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
CIVIL NO. 09-2622 (DWF / RLE)

SIERRA CLUB, INC., MINNESOTA)
CENTER FOR ENVIRONMENTAL)
ADVOCACY, NATIONAL)
WILDLIFE FEDERATION, and)
INDIGENOUS ENVIRONMENTAL)
NETWORK,)

Plaintiffs,)

v.)

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

HILLARY CLINTON, in her official)
capacity as Secretary of State,)
JAMES STEINBERG, in his official)
capacity as Deputy Secretary of State,)
UNITED STATES DEPARTMENT)
OF STATE, Lieutenant General)
ROBERT L. VAN ANTWERP, in his)
official capacity as U.S. Army Chief)
of Engineers and Commanding)
General of the U.S. Army Corps of)
Engineers, Colonel JON L.)
CHRISTENSEN, in his official)
capacity as District Engineer and)
Commander of the U.S. Army Corps)
of Engineers, the UNITED STATES)
ARMY CORPS OF ENGINEERS,)
TOM TIDWELL, in his official)
capacity as Chief of the United States)
Forest Service, ROB HARPER, in his)
official capacity as Forest Supervisor)
for the Chippewa National Forest, and)
the UNITED STATES FOREST)
SERVICE,)

Hon. Donovan W. Frank
U.S. District Judge

Defendants,)

and)

ENBRIDGE ENERGY, LIMITED)
PARTNERSHIP,)

Intervenor.)



Defendants United States Department of State (“State Department”), United States Army Corps of Engineers (“Corps”), United States Forest Service (“Forest Service”) *et al.* (collectively “Defendants” or “Agencies”) hereby move for summary judgment on Claims One through Four of Plaintiffs’ First Amended Complaint. Claims Five and Six were dismissed by the Court in its February 24, 2010 Order (Dkt. No. 185).

Plaintiffs allege that the State Department’s issuance of a Presidential Permit, pursuant to Executive Order 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004), allowing Enbridge Energy, Limited Partnership (“Enbridge”) to construct a pipeline crossing the international border between the United States and Canada, violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* Plaintiffs also allege that the Corps’ issuance of permits to Enbridge under the Clean Water Act, 33 U.S.C. § 1344, and the Rivers and Harbors Act, 33 U.S.C. § 401, violated NEPA. And, finally, Plaintiffs allege that the Forest Service’s issuance of special use permits to Enbridge allowing construction of the pipeline in the Chippewa National Forest violated NEPA.

Plaintiffs allege that the Agencies violated NEPA on four grounds: (1) the EIS contains an invalid purpose and need statement and analyzes an insufficient range of alternatives (Fourth Claim), (2) the Agencies’ NEPA analyses improperly segmented the analyses of the Alberta Clipper Pipeline and the Southern Lights Diluent Pipeline (First Claim), (3) the Agencies’ NEPA analyses failed to adequately address the potential environmental impacts of leaks and spills from the Alberta Clipper Pipeline and the Southern Lights Diluent Pipeline (Third Claim), and (4) the Agencies’ NEPA analyses failed to adequately analyze the indirect and cumulative effects of the Alberta Clipper Pipeline (Second Claim). *See* First Amend. Comp. at 27-35 (Dkt. No. 57).

As explained in Defendants Memorandum in Support of Motion for Summary Judgment submitted concurrently herewith, summary judgment should be granted for Defendants because the Court lacks jurisdiction over Plaintiffs’ NEPA claims against the State Department, and, even assuming that the Court has jurisdiction, the Agencies have fully satisfied their obligations under NEPA and Plaintiffs’ claims are without merit.

Respectfully submitted this 25th day of June, 2010.

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