

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. )

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, )

Defendants, )

and )

ENBRIDGE ENERGY, LIMITED )  
PARTNERSHIP, )

Intervenor. )

**DEFENDANTS' MOTION TO DISMISS  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

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



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”) hereby move, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), to dismiss the First Amended Complaint (Docket No. 57) filed in this action by Plaintiffs Sierra Club, Inc., Minnesota Center for Environmental Advocacy, Indigenous Environmental Network, and National Wildlife Federation (“Plaintiffs”).

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 at the Canadian border, violated the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-06, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, and the U.S. Constitution. 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’ claims should be dismissed on the following grounds:

(1) Plaintiffs’ NEPA claims against the State Department regarding the Alberta Clipper Pipeline should be dismissed for lack of jurisdiction because the Plaintiffs lack standing to bring the claim and because the issuance of the Permit to Enbridge is a Presidential action not subject to judicial review under the APA.

(2) Plaintiffs’ NEPA claim against the State Department regarding the Southern Lights LSr Pipeline should be dismissed for lack of standing and because it is not subject to APA review. In addition, the claim should be dismissed as moot because the LSr Pipeline has already been constructed and is operational.

(3) Plaintiffs’ claim that the issuance of the Presidential Permit for the Alberta Clipper Pipeline violated the U.S. Constitution should be dismissed for failure to state a claim because it is well established that the President has the constitutional authority to issue such permits.

(4) Plaintiffs' NEPA claims against the Corps and the Forest Service should be dismissed for failure to state a claim because Plaintiffs fail to allege facts supporting the existence of NEPA violations by these agencies.

Accordingly, Defendants respectfully request that the Court dismiss Plaintiffs' First through Fifth Claims for Relief against the State Department with prejudice for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1); dismiss Plaintiffs' Sixth Claim for Relief with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6); and dismiss Plaintiffs' First through Fourth Claims for Relief against the Corps and the Forest Service without prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

In support of this Motion, Defendants submit the accompanying Memorandum in Support and the Declaration of Luther L. Hajek and exhibits thereto.

Respectfully submitted this 16th day of October, 2009.

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment & Natural Resources Division

*/s/ Luther L. Hajek*  
LUTHER L. HAJEK, D.C. Bar No. 467742  
United States Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
Ben Franklin Station, P.O. Box 663  
Washington, DC 20044-0663  
Tel: (202) 305-0492  
Fax: (202) 305-0274  
E-mail: [luke.hajek@usdoj.gov](mailto:luke.hajek@usdoj.gov)

B. TODD JONES  
United States Attorney

CHAD A. BLUMENFIELD  
Assistant U.S. Attorney  
Attorney ID No. 387296  
600 U.S. Courthouse  
300 S. Fourth Street  
Minneapolis, MN 55415  
Tel: (612) 664-5600  
E-mail: [chad.blumenfield@usdoj.gov](mailto:chad.blumenfield@usdoj.gov)

Attorneys for Defendants

Of Counsel:

KEITH BENES  
JOHN SCHNITKER  
Attorney-Advisers  
U.S. Department of State  
2201 C Street NW  
Washington, DC 20520