

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

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

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

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

Defendant-Intervenor

CIV. NO. 09-CV-2622 (DWF/RLE)

DECLARATION OF JAMES G. CRAWFORD IN SUPPORT OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

1. I, James G. Crawford, have personal knowledge of the following and make this declaration in support of Enbridge Energy, Limited Partnership's ("Enbridge") Opposition to Plaintiffs' Motion for a Preliminary Injunction.

2. Enbridge is a limited partnership organized in Delaware. It is wholly owned by Enbridge Energy Partners, L.P. ("EEP"), a publicly held master limited partnership based in Houston, Texas. EEP is involved in energy transportation and distribution in North America and internationally with its affiliate Enbridge Inc., a Calgary, Alberta based company. Enbridge operates the U.S. portion of the Enbridge System, which is a major crude oil pipeline system providing transportation of oil from North Dakota and Western Canada to the U.S. Midwest and points in Eastern Canada and New York State. The Canadian portion of the Enbridge System is operated by a subsidiary of Enbridge Inc. and is regulated by the National Energy Board ("NEB") in Canada. The U.S. portion, which is commonly referred to as the "Lakehead System," is operated by Enbridge.

3. I am currently employed as the Director, Engineering & Construction, Alberta Clipper U.S. at Enbridge and have been employed at this position for the last 3 years. In my capacity as Director, Engineering & Construction I am responsible for the planning, design and construction of the United States portion of the Alberta Clipper Pipeline project, as well as the co-located portion of the Southern Lights Diluent Pipeline project.

4. I have personal knowledge of Enbridge's plans to increase its ability to transport crude oil to markets in the United States and to transport diluent to Canada. This increase in capacity is necessary to meet customer requests and marketplace demands. To meet this demand, Enbridge and its affiliates plan to construct, operate, and maintain two new pipelines: the Alberta Clipper Pipeline and the Southern Lights Diluent Pipeline.
5. The Alberta Clipper Pipeline is an underground pipeline that will extend between Hardisty, Alberta, Canada and Superior, Wisconsin. The pipeline will have the capacity to deliver up to 450,000 barrels per day (bpd) of crude oil from an existing supply hub near Hardisty to an existing terminal in Superior. The total length of the new pipeline in Canada and the United States will be approximately 1,000 miles.
6. In the United States, the Alberta Clipper Pipeline will consist of approximately 326 miles of new 36-inch diameter pipeline and associated facilities that will be installed primarily within and adjacent to the existing Enbridge pipeline corridor that extends from the U.S./Canada border near Neche, North Dakota to the Enbridge System terminal in Superior. That corridor already accommodates several other underground pipelines of the Lakehead System, most of which have been there for decades. This pipeline corridor is largely within an energy/transportation corridor in which a highway, railroad and other facilities are located, as further described in the accompanying declaration of my colleague, Denise Hamsher.

7. The Southern Lights Diluent Pipeline Project involves the construction of a new pipeline between Manhattan, Illinois and Clearbrook, MN, where it will connect with an existing pipeline that will be reversed to flow northbound into Canada. The portion of the Southern Lights pipeline discussed in this declaration is the portion being constructed from Superior, Wisconsin to Clearbrook, Minnesota, which is collocated with the Alberta Clipper Pipeline. The remainder of the Southern Lights Diluent Pipeline is fully constructed, except for a short segment that is under construction at this time. The Alberta Clipper Pipeline will be located immediately adjacent to the Southern Lights Diluent Pipeline within and adjacent to this existing right-of-way. For most of the route, Enbridge will only expand the width of the current pipeline right-of-way by amounts ranging from 25 to 105 feet to accommodate both pipelines, depending on the spacing of the new pipelines relative to the existing pipelines, the availability of space in the corridor at any specific point, and other factors. There are a few locations, totaling less than 35 miles, where the right-of-way for the new pipelines diverges from the existing right-of-way. These deviations were primarily designed to address environmental or constructability issues, or regulatory agency or landowner requests. The two pipelines are being simultaneously constructed in the same construction season so that the right-of-way will be disturbed only once thus minimizing environmental impacts.

8. Because the Alberta Clipper Pipeline will cross the U.S./Canada border, Enbridge was required to obtain a Presidential Permit from the Department of State (“State Department”) pursuant to the terms of Executive Order 13337, which vests the State Department with authority to issue such permits for certain energy-related infrastructure at the U.S. international borders. Since the Southern Lights Pipeline does not cross an international border, Enbridge was not required to obtain a Presidential Permit from the State Department for its construction. However, like the Alberta Clipper Pipeline, the Southern Lights Diluent Pipeline did require certain other federal and state permits, including a US. Army Corps of Engineers permit, a U.S. Forest Service authorization to cross a national forest and various state routing and other permits described more fully in Ms. Hamsher’s Declaration.

A complete list of the federal and state permits that Enbridge was required to obtain for the Alberta Clipper pipeline is set forth as Exhibit 1 to this declaration. The work involved in obtaining these permits and the comparable permits for the Southern Lights Diluent Pipeline, and in conducting the associated environmental reviews for both pipelines, was extensive and took approximately two years to complete. These processes consumed a substantial amount of the time of at least 15 employees of Enbridge and related consulting companies. The cost was also extensive. Enbridge estimates that it has spent at least \$12.4 million for environmental work and in excess of \$3 million in associated legal costs in support of permitting the Albert Clipper and Southern Lights Diluent projects since 2007.

9. Enbridge began construction of the Alberta Clipper and Southern Lights Diluent Pipelines on August 20, 2009, after the State Department issued the Presidential Permit for the Alberta Clipper Pipeline. Enbridge anticipates construction to progress this fall and winter and that the Alberta Clipper Pipeline will be mechanically complete and ready to receive crude oil by March 31, 2010. Following a period of commissioning and completion of linefill, it will be operational by the middle of 2010. Likewise, the Southern Lights Diluent pipeline is expected to become operational at about the same time.
10. A substantial amount of pipeline construction has already taken place. Approximately 248 miles of right-of-way has already been cleared and 220 of these miles have been graded. Construction is occurring generally six days per week, including Saturdays, and for as long as possible each day to take advantage of dwindling warmer weather and daylight.
11. Construction of the pipelines is being managed by Global Pipeline Partners, LLC (GPP). GPP is a consortium of experienced pipeline contractors, consisting of Precision Pipeline, LLC (Eau Claire, WI), Michels Corporation (Brownsville, WI) and U.S Pipeline Inc. (Houston, TX), along with numerous subcontractors to GPP. The contractor's crews consist primarily of equipment operators, teamsters, welders, and laborers, most of whom are union members who are hired for the specific job, along with field and office management personnel who are typically employees of the contractor group (Precision, Michels, US Pipeline). Enbridge employees consist

of primarily craft inspectors, environmental inspectors, safety personnel, cost management and support staff.

12. The contractors are ramping up to the expected peak of approximately 3,000 construction workers. The construction work has been divided into areas referred to as spreads, with work occurring concurrently in each of the spreads. There will be approximately 500 workers for each of the six spreads as well as other crews working on project-related tank and other facilities within the U.S. As of October 10, 2009, approximately 2,800 workers (including subcontractors) are already deployed across the six spreads constructing the two pipelines and the tank terminal in Superior. An additional workforce of 200 – 300 is still expected to be employed in order to complete the work.
13. Each remaining calendar day is vital to the construction of the pipeline due to the constraints imposed by declining daylight as we near the end of the year. Rain or other poor weather conditions frequently occur in the fall in the Upper Midwest and this reduces productivity. The impending freezing weather that begins in late fall will eventually bring construction to a halt until the spring, except for certain stretches where construction can only occur in the winter due to the condition of the right-of way, as discussed in more detail below.
14. Prior to beginning construction, Enbridge invested significant resources in preparing for construction. For example, Enbridge acquired the needed right-of-way access

rights and completed the engineering design of the pipelines. Over the course of the last several weeks and months, Enbridge has consulted with approximately 1,500 landowners along the right-of-way, incorporating landowner-specific concerns into routing decisions within the approved corridor for construction. Significant engineering work has also been undertaken with respect to the determination of final routings and the determination of materials requirements. The procurement process is also well underway. To date, Enbridge has spent more than \$44 million for right-of-way acquisition and more than \$13 million in outside consultant fees for engineering design. Enbridge expects that additional expenditures for right-of-way acquisition will total approximately \$2.75 million.

15. Enbridge has also entered into various contracts relative to construction of the Alberta Clipper and Southern Lights Diluent Pipelines. These include: a major contract with a pipe mill to manufacture and coat the line pipe, and transportation companies to move the pipe into stockpiles near the planned route; a contract with GPP to install the pipeline; a contract for over 30 horizontal directional drills to cross waterbodies, wetlands, and roads pursuant to consultation with the applicable regulatory agencies as discussed below; and contracts with pump station and tank erection companies. In addition, there are hundreds of smaller contracts in place for quality assurance, inspection, and other tasks. To date, for the Alberta Clipper Pipeline alone, Enbridge has paid \$360 million for materials and labor and has

contractually committed to pay an additional \$645 million under the terms of these materials acquisition and labor contracts.

16. All of the construction that has taken place to date, and all future construction of the two pipelines, is being and will be carefully managed to reduce adverse environmental impacts. Apart from its own best practices as an entity fully aware of its environmental stewardship obligations, Enbridge is required to comport with a large number of permit conditions and mitigation measures imposed by agencies with jurisdiction over the pipeline construction. These conditions and mitigation measures are designed to protect sensitive environmental features, including wetlands and waterways. The agencies include the U.S. Army Corps of Engineers (“Corps”), the U.S. EPA, Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources, the Wisconsin Department of Natural Resources, the North Dakota Department of Health, and the Fond du Lac Reservation. A set of Environmental Permit Fact Sheets summarizing the environmental conditions imposed by some of these agencies with respect to construction of these pipelines is attached as Exhibit 2. As the Fact Sheets illustrate, erosion control and stormwater pollution control are major elements of the environmental conditions imposed on Enbridge to ensure that construction does not harm sensitive water and wetland resources. For example, Enbridge is required to stabilize soil areas as soon as possible to limit erosion, to use best practices to limit erosion and control sediment, and to monitor and inspect areas for erosion.

17. In addition, the Corps permit issued by the St. Paul District for Minnesota and Wisconsin, a copy of which is attached as Exhibit 3, also requires that all wetland areas temporarily impacted by the pipeline and the pipeline construction be restored to preconstruction conditions or to specific conditions stated in the permit.

18. In fact, one of the key elements in ensuring that pipeline construction does not cause harm to wetlands, streams and rivers and other sensitive environmental features is to quickly open relatively short sections of the trenches needed to lay the pipeline and then, as quickly as possible, close them. For example, the Corps permit states that each of the six spreads “shall not exceed 14,400 feet in length of open trench and the trailing end of each spread shall be restored (backfilled and BMPs in place) as the leading edge of the spread is opened.” The speed of construction is critical to reducing exposure to rain or other adverse weather events and thus reducing the consequent heightened risk of erosion caused by rain or other adverse weather events. For example, both of the Alberta Clipper and Southern Lights pipelines were installed in the Clearwater River in Minnesota, a waterway designated as critical trout habitat by the Minnesota Department of Natural Resources, in 12 days without incident or report of any environmental noncompliance, thereby reducing and minimizing the erosion risks and other impacts to the resource. Similarly, both the Alberta Clipper and Southern Lights pipelines were installed across the Little Otter Creek, another designated critical trout habitat in Minnesota, in 14 days (including preparation of access roads to the site) without incident or report of any

environmental noncompliance. Enbridge also completed construction of the Alberta Clipper pipeline across another such critical habitat waterway in 5 days without incident. Were this Court to issue a Preliminary Injunction forcing a halt to on-going construction, bore pits adjacent to waterbodies, approximately 248 miles of cleared right-of-way and approximately 220 miles of graded right-of-way would remain exposed to weather conditions. With heavy storms that are not uncommon in the area at this time of year, erosion risks would be significantly heightened. The environmental degradation that Enbridge is working hard to avoid, consistent with the mandates imposed by a variety of environmental protection agencies, would more likely come to pass were Enbridge forced even for a short time to abandon existing construction sites. Similarly, if Enbridge were unable to construct in certain wetland areas during the winter months it would increase the potential for possible harm. Winter construction is used in these areas to limit excessive rutting which leads to mixing of soils (surface and subsurface) as well as interrupting the normal hydrology of the feature.

19. Further, if this Court issues a Preliminary Injunction, there is increased potential for public safety risks due to the construction work in progress adjacent to various state, county and local highways and roads. As at the beginning of October and over the next three months there will typically be 18 to 24 road bores in progress at any given time. These road bores require large excavations immediately adjacent to the roads. In addition, there are routinely open-cut road crossings in progress, which

require closure of the road and excavation and trenching across the road surface to accommodate pipeline installation. If a Preliminary Injunction is issued, all of these open excavations would remain exposed, inactive and without traffic controls or monitoring and inspection of their impact, if any, on the stability of the adjacent roadbeds.

20. Further, if this Court issues a Preliminary Injunction, Enbridge will incur substantial monetary penalties under the terms of the construction contracts it has entered for the pipelines if construction were delayed. For example, under the terms of its contract with GPP, Enbridge would be required to pay about \$3.9 million/day in standby fees for each day that work does not occur, an amount that represents about 70% of the fees it would pay for a normal workday.

21. Further, if GPP were forced by a Preliminary Injunction to shut down operations, the contractor will not just walk away from the equipment and materials. GPP will have to conduct a measured demobilization to secure equipment and materials back in the storage yards; the contractors will not simply leave the equipment on the right-of-way. Following the down time, the contractor will then have to remobilize the equipment and resources if and when the injunction is ultimately dissolved. The production rate will be diminished at restart as the equipment and resources are remobilized and the crews are reassembled. There are costs associated with those otherwise unplanned activities and production efficiency impacts, which Enbridge has conservatively estimated will total another \$5 million. In addition, Enbridge is

contractually obligated to pay the horizontal directional drill contractor (a method of installing pipelines under sensitive features without above-ground disturbance) \$30,000 per rig per day that each rig is not working.

22. As I noted above, Enbridge also employs numerous inspectors and supervisors, and various home office support personnel in connection with the construction of the pipelines. Enbridge would be obligated to continue paying about \$5 million in wages to these persons, even though they will essentially remain idle.
23. In addition, to the cost discussed above Enbridge would have other costs such as financial carrying costs and cost impacts from delaying the tank facility construction that would in all likelihood add to the cost of a work stoppage. In addition to these costs, Enbridge would face increased pipe storage fees, right-of-way maintenance fees, and landowner damages costs arising from land disturbances. Finally a prolonged injunction would result in the loss of anticipated revenues and a variety of other significant monetary penalties.
24. Further, given the high level of standby payments that Enbridge would incur under the construction contracts, a prolonged injunction could effectively force Enbridge to terminate the construction contracts, which would result in the millions of dollars in liability for termination fees that would be due under the contracts. Were Enbridge to terminate the contracts, the heavy equipment that the construction contractors have committed to the construction of the AC and SLD pipelines would

very likely be dispersed to other jobs, as would the several thousand workers now committed to the pipelines. The costs to Enbridge of restarting the work at the point that an injunction were dissolved would be very substantial as the equipment and workforce, which by then would likely be committed to other projects, would have to be fully reassembled. The delays resulting from such efforts would also be substantial, likely measured in months. As a consequence, Enbridge would be unable for the lengthy period of such a delay to undertake the work needed toward placing the pipelines into service for the benefit of its customers and the national interest.

25. Turning to the claims of irreparable injury submitted in various landowner and other declarations offered by Plaintiffs, I will briefly respond to some of these claims. Generally, the claims made in these declarations reflect no more than the consequence of building any pipeline – there is some disruption to land use. But that disruption is temporary and, once buried, the area above the pipeline is typically returned to its prior use. Here, the land use disruption is minimized by the fact that construction is taking place within an existing pipeline corridor. Pictures showing a typical right-of-way following construction are attached at Exhibit 4.
26. Declarant May revisits a variety of issues addressed in the Environmental Impact Statement (“EIS”). This declarant did not participate in the proceeding below and offers no explanation for that lack of participation or for her failure to raise the issues she now raises when she had the opportunity to comment on the Draft EIS.

While she disagrees with the analysis on many points, she does not demonstrate that the State Department failed to consider the issues of relevance to the pipelines. She raises concerns about the Murphy oil refinery, the potential expansion of which is speculative and, in any event, not a connected action to the Alberta Clipper pipeline. Her discussion of spills overlooks the fact that the pipelines will be subject to strict and continuing federal safety inspection and that the risks of spills was assessed in the Draft EIS.

27. Declarant Norrgard, who lives far from the pipelines in Bloomington, MN, complains of impacts to water and other resources in the Chippewa National Forest. These impacts were studied not only by the State Department, but also by the U.S. Forest Service, which conducted its own environmental assessment of impacts to that national forest. The environmental reviews demonstrate that impacts to the Kettle River and other water resources are not expected to be significant. Further, Ms. Norrgard's concerns about the oil sands, oil refining, air pollution, climate change, the risk of leaks and other generalized worries do not demonstrate immediate irreparable harm. There already is a major pipeline corridor in the location where the Alberta Clipper pipeline will be added and yet Ms. Norrgard is able, by her own admission to enjoy the National Forest today.
28. Declarant Joshua Davis, who also lives far from the pipelines in St. Paul, MN, is concerned about expansion of the Murphy Oil refinery in Superior, WI. There is no certainty that that refinery will be expanded, but in any event any expansion that is

undertaken is not connected to the Alberta Clipper pipeline. Further, his highly generalized air and water pollution concerns about the Chippewa National Forest overlook the temporary nature of construction impacts and the fact that a major pipeline corridor, which will be modestly expanded to accommodate the two new Enbridge pipelines, already runs through the National Forest.

29. Declarant Mary Smith focuses her statement on the Murphy Oil refinery. That refinery is not at issue here and the relevance of her comments is thus open to question. Her other concerns are broad, generalized concerns about climate change and other impacts, but these concerns do not demonstrate any immediate or irreparable injury.

30. Declarant Ami Chari Aalgaard focuses her statement on the impacts of construction to her property – noisy trucks, felled trees and vibration. However, the construction in the vicinity of her home will last no more than a matter of weeks. She has not demonstrated sufficient impacts to warrant putting a stop to a project invested with a national interest. Further, she refers to the disappearance of her neighbor's house, failing to mention that it was voluntarily sold to Enbridge. She furthermore fails to mention that she voluntarily negotiated with Enbridge for the acquisition of easement rights by Enbridge to construct and operate the Alberta Clipper and Southern Lights pipelines on her property, including the right for Enbridge to use temporary workspace on her property and clear trees. Declarant Aalgaard was compensated for acquisition of these rights by Enbridge.

31. Declarant Steva references the impacts of the clearing of land in other areas of Minnesota on bird populations. That land clearing has nothing to do with the Enbridge pipelines, which will be located in an existing pipeline and transportation corridor. The U.S. Fish and Wildlife Service determined that the pipelines will not adversely affect any threatened or endangered bird species. Further, his reference to disruptions at the Lost River overlooks the fact that such disruptions will last no more than one month and should not degrade the declarant's enjoyment of the River after that.

32. Declarant Caron is concerned that construction of the pipeline will interfere with the enjoyment of hunting in Minnesota. Pipeline construction is temporary and limited to the areas directly adjacent to where the pipeline is being laid. His generalized declaration does not demonstrate immediate or irreparable injury to his hunting. Further, once construction is completed, a pipeline corridor is generally an area where hunting is improved as the corridor becomes a gathering place for game species.

33. Declarant Goldtooth is concerned that opposition to the pipeline and to the oil sands development will drain his organization's budget and he fears a pipeline spill. These are very generalized concerns that do not demonstrate any immediate or irreparable harm from continued construction of the pipelines. As federally regulated interstate liquids pipelines, the Alberta Clipper and Southern Lights

Diluent pipelines will be subject to all applicable federal safety requirements, including implementation of an Emergency Response Plan for the pipelines.

34. Some of the declarants complain that the pipeline will interfere with calcareous fen, a rare wetland. However, there is little likelihood that any fen would be adversely impacted. Before construction began in 2008 on Enbridge's LSr pipeline, which is partially co-located with the Alberta Clipper pipeline, Enbridge located a potential calcareous fen in northwestern Minnesota along the route of that pipeline. Enbridge filed a request for a route width deviation at that location in order to avoid this fen. The Minnesota Department of Natural Resources ("DNR") supported Enbridge's request for a route width deviation, stating that "[t]he reroute would avoid impacts to a potential calcareous fen." Enbridge then requested a similar deviation at the same location for the Alberta Clipper pipeline. Subsequently, the Minnesota NDR, in an order published in the State Register on August 31, 2009, identified the areas between Milepost 892.5 and 894.8 as a calcareous fen. Enbridge has suspended work on the pipeline between these mile posts until MDNR approves a calcareous fen management plan for the pipeline or determines that a calcareous fen management plan is not required. This illustrates the flexibility and robust nature of the environmental review process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of October 2009.

s/ James G. Crawford
James G. Crawford