

UNITED STATES DISTRICT COURT  
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. )

and )

ENBRIDGE ENERGY, LIMITED )  
PARTNERSHIP )

Intervenor-Defendant. )

Civ. No. 0:09-cv-02622-(DWF/RLE)

MEMORANDUM IN SUPPORT OF  
MOTION TO AMEND PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION TO CONFORM TO  
AMENDED COMPLAINT

(National Environmental Policy Act, 42  
U.S.C. §§ 4321 et seq.)

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

Hearing Date: TBD  
Time: TBD

**MEMORANDUM IN SUPPORT OF MOTION TO AMEND PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION TO CONFORM TO AMENDED  
COMPLAINT**

This case commenced on September 3, 2009 when Plaintiffs filed their Complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Northern District of California against the United States Department of State (“State Department”) and the United States Army Corps of Engineers (“Army Corps”). Plaintiffs’ action seeks to vacate: 1) the State Department’s August 20, 2009 Presidential permit granted to Enbridge Energy LP and its affiliates (collectively, “Enbridge”), to construct and operate the Alberta Clipper and Southern Lights pipelines; and 2) the Army Corps’ August 24, 2009 permits authorizing Enbridge to dredge and fill wetlands and place structures in or under water-bodies in connection with construction of the Alberta Clipper and Southern Lights pipelines. Concurrently, Plaintiffs also filed a Motion for Temporary Restraining Order and Preliminary Injunction against the same Defendants seeking to enjoin any action taken pursuant to these permits.

On September 9, 2009 Judge Illston of the Northern District of California denied Plaintiffs’ Motion for Temporary Restraining Order but did not rule on the Motion for Preliminary Injunction.

On September 23, 2009 Judge Illston granted Defendants’ Motion to Transfer Venue to the District of Minnesota prior to ruling on Plaintiffs’ Motion for Preliminary Injunction. This Motion for Preliminary Injunction is now pending in the District of Minnesota in the above-captioned matter.

On October 1, 2009 Plaintiffs filed the First Amended Complaint for Declaratory and Injunctive Relief in the District of Minnesota. The Amended Complaint added the

Forest Service as a Defendant. Plaintiffs could not include the Forest Service in the original complaint or the Motion for Temporary Restraining Order and Preliminary Injunction because the Forest Service's action issuing special use permits for the construction and maintenance of the Alberta Clipper and Southern Lights pipelines in the Chippewa National Forest was not final until September 28, 2009.<sup>1</sup>

Pursuant to the court's order of October 6, 2009: 1) Plaintiffs rely on their brief in support of their Motion for Preliminary Injunction that was originally filed in the Northern District of California; 2) Federal Defendants and Intervenor-Defendants filed their Response Briefs in Opposition to Plaintiffs Motion for Preliminary Injunction on October 16, 2009; and 3) Plaintiffs are to file their Reply Brief in Support of Motion for Preliminary Injunction on October 26, 2009.

Accordingly, Plaintiffs hereby move to amend the Motion for Preliminary Injunction to request that the injunction include a prohibition on the Forest Service implementing or allowing any further action pursuant to its special use permit of June 29, 2009. This request is set forth in the Amended Notice of Motion and Motion for Preliminary Injunction attached hereto.

Plaintiffs submit that additional briefing on the merits of the Motion for Preliminary Injunction as against the Forest Service is not necessary because: 1) Plaintiffs do not propose to amend their Memorandum In Support of Motion for Preliminary

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<sup>1</sup> On June 29, 2009, the Chippewa National Forest Supervisor issued special use permits and a Record of Decision ("ROD") for the construction and maintenance of the Alberta Clipper and Southern Lights diluent pipelines in the Chippewa National Forest. Plaintiffs filed a timely administrative appeal on August 17, 2009, challenging the Forest Service's failure to conduct an independent NEPA analysis and its reliance on the State Department's inadequate FEIS. On September 24, 2009, the Appeal Reviewing Officer recommended that the appeal be denied and the ROD affirmed. On September 28, 2009, the Forest Service's Appeal Deciding Officer adopted the recommendation of the Reviewing Officer. The Appeal Deciding Officer's decision is the Forest Service's final agency action. 36 C.F.R. § 215.18(c).

Injunction as the arguments for an injunction against the Forest Service are adequately set forth therein; and 2) both Defendants and Intervenor-Defendant in their respective briefs in opposition to Plaintiffs' Motion for a Preliminary Injunction include arguments in opposition to the issuance of a Preliminary injunction against the Forest Service, *see* Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction at 26-28; Enbridge Energy, Limited Partnerships' Opposition to Plaintiffs' Motion for a Preliminary Injunction at 3, 15, 19.

Although Defendants note that "Plaintiffs have not sought any relief against the [Forest Service] in their Motion," they go on to argue that such a motion "would fail because the Forest Service has fully complied with NEPA." Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction at 26-27. Defendants then devote over a page of their brief to this argument – marginally more space than they devote to the claims against the Army Corps, an original party to the suit and the Motion for Preliminary Injunction. *Compare id.* at 26-28 *with id.* at 26. Similarly, Intervenor-Defendants address the claims against the Forest Service concurrently with the claims against the Army Corps. *See* Enbridge Energy, Limited Partnerships' Opposition to Plaintiffs' Motion for a Preliminary Injunction at 3, 15, 19.

Respectfully submitted,

Dated: October 23, 2009

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