

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)

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

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

Hearing Date: August 9, 2010
Time: 9:00 am

Plaintiffs Sierra Club, Minnesota Center for Environmental Advocacy, National Wildlife Federation, and Indigenous Environmental Network (“Plaintiffs”) hereby move for summary judgment, pursuant to Fed. R. Civ. P. 56 and Local Rule 7.1(b). This motion is being filed in the above-captioned case, presided over by U.S. District Judge Donovan Frank. A hearing on this Motion has been set for August 9, 2010 at 9:00am.

Plaintiffs are entitled as a matter of law to summary judgment because Defendants U.S. Department of State, U.S. Army Corps of Engineers, and U.S. Forest Service *et al.* (collectively “Defendants”) violated the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), its implementing regulations, and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* (“APA”), when they issued their final Environmental Impact Statement (“EIS”) and permitting decision notices for the Alberta Clipper (“AC”) and Southern Lights diluent (“SLD”) pipeline projects.

The EIS violates NEPA because it: i) fails to provide a valid statement of purpose and need, and to consider reasonable alternatives—including the “no action” alternative—for the projects; ii) fails to take a “hard look” at the impacts of the SLD pipeline; iii) fails to assess all reasonably foreseeable indirect and cumulative impacts of the projects; and iv) fails to evaluate the impacts of abandonment of the pipelines.

Accordingly, Plaintiffs respectfully request that this Court grant Plaintiffs’ Motion for Summary Judgment and remand with instructions to Defendants to provide the environmental analysis NEPA requires.

In support of this Motion, Plaintiffs submit the accompanying Memorandum in Support, the Declaration of Sarah Burt and exhibits thereto, and Plaintiffs Request for Judicial Notice.

Respectfully submitted,

Dated: May 21, 2010

/s/ Sarah H. Burt
SARAH H. BURT (admitted *pro hac vice*)
J. MARTIN WAGNER (admitted *pro hac vice*)
Earthjustice
426 17th Street, 6th Floor
Oakland, CA 94612
Tel.: (510) 550-6700
Fax: (510) 550-6740
sburt@earthjustice.org
mwagner@earthjustice.org

/s/ Kevin Reuther
KEVIN REUTHER (Minn. Bar No. 266255)
Minnesota Center for Environmental Advocacy
26 E. Exchange St., Suite 206
St. Paul, MN 55101
Tel.: (651) 223-5969
Fax: (651) 223-5967
kreuther@mncenter.org

/s/ Eric E. Huber
ERIC E. HUBER (admitted *pro hac vice*)
DOUGLAS P. HAYES (admitted *pro hac vice*)
Sierra Club Environmental Law Program
1650 38th Street, Suite 102W
Boulder, Colorado 80301
Tel.: (303) 449-5595
Fax: (303) 449-6520
eric.huber@sierraclub.org
doug.hayes@sierraclub.org

Attorneys for Plaintiffs