



September 1, 2021

Dear Members of Congress and the Minnesota Legislature,

We are aware of your August 30, 2021 [letter](#) to President Biden regarding the Enbridge Line 3 replacement project. We acknowledge the deep passion and emotion related to this project, and we respect your prerogative to share your views and relay concerns held by you and your constituents.

As executive branch agencies responsible for implementing the laws written by the legislative branch, we offer the following response to some of the content in your letter, addressing several assertions and statements that present false or misleading information about the work of the Minnesota Departments of Natural Resources, Public Safety, and Transportation. We have also attached a chart that provides additional detail about some of the issues addressed below. Please let us know if you would like to further discuss your concerns or clarify any of the below information.

Government-to-Government Consultation

First, we want to acknowledge the requests in your letter for federal/tribal government-to-government consultation. State/tribal government-to-government consultation has been a priority of the Walz-Flanagan Administration from the beginning. In 2019, just three months into his administration, Governor Walz issued [Executive Order 19-24](#), requiring executive branch agencies to draft and implement tribal consultation policies. Two years later, the Minnesota Legislature followed the Governor's lead by [codifying](#) tribal consultation into law during the 2021 Special Session. We join you in celebrating that long-overdue milestone. Please be assured that, as the leaders of state agencies, we take seriously this responsibility and opportunity to communicate with other governmental partners. As it pertains to the Enbridge Line 3 replacement project, your assertion that "there is no ongoing consultation" is simply wrong. We and our staff have consulted extensively with Tribal Leaders and staff—in particular those whose lands are in close proximity to the project—throughout our work on this project. We have provided additional detail on this consultation in the attached chart.

Drought Management

As state leaders, we share your concerns about the drought conditions, including impacts on wild rice and ecosystems that are important to Indigenous culture. The Minnesota Department of Natural Resources (DNR) is managing this drought as prescribed under the State Drought Management Plan and consistent with Minnesota statutes enacted by the Minnesota Legislature. This systematic approach ensures that restrictions and modifications are applied fairly and consistently across the state and among permittees, according to the state's statutorily established water use priorities.

Consistent with the State Drought Management Plan, DNR has applied the same water use restrictions on Enbridge as it has to all other regulated water users in areas subject to appropriation suspensions due to low-flow conditions. As of August 31, the DNR has suspended Enbridge's surface water appropriations in nine watersheds across Minnesota due to low-flow conditions. This includes appropriations associated with dust control at 26 locations along the Line 3 route, and appropriations associated with hydrostatic testing and horizontal directional drilling at 23 locations along the Line 3 route.

You incorrectly assert that "the Minnesota Department of Natural Resources allowed Enbridge to remove an additional 4.5 billion gallons of water from seasonal wetlands." Neither the original permit for temporary trench dewatering, nor the June 4, 2021 amendment, allow water to be removed from surface water bodies, including seasonal wetlands. The suggestion that the temporary act of trench dewatering has exacerbated the drought is theoretical and unsubstantiated. DNR's field-based natural resource scientists estimate that between 2.5 and 5 percent of the water removed from construction trenches in this process would be lost to evaporation. They are confident in their conclusion that water resources would not be significantly impacted by this temporary water appropriation. The low water observed in streams and lakes is the result of drought conditions. DNR has seen these low water conditions across the state; they are not exclusively or disproportionately associated with the geography of the Line 3 replacement.

Through August 2021, Enbridge has temporarily appropriated 814.4 million gallons (less than 17 percent of the company's permitted limit) from groundwater sources. Dewatering is needed when groundwater seeps into a construction trench. Because groundwater levels are low as a result of drought conditions, trenches did not fill in nearly as readily as they might under more typical conditions. As a result, the Line 3 replacement project has temporarily removed far less water from construction trenches than was authorized in Enbridge's permit.

Public Safety

Red Lake Treaty Camp

As it relates to public safety for workers and demonstrators along the line, we also must address your assertion that "the Minnesota Departments of Transportation and

Public Safety attempted to ‘evict’ a treaty camp.” It is important to clarify that the Red Lake Nation (RLN) established a camp on state land, a right-of-way belonging to the Minnesota Department of Transportation (MnDOT). We understand this site is considered an important cultural site due to its location near the river. Through negotiations between MnDOT and RLN, the parties reached an agreement that allowed a camp to exist at the site for the purpose of cultural practices.

As Enbridge’s work intensified in the area, the camp continued to grow, creating risk to drivers on Highway 32 and demonstrators on the site. To avoid injuries, MnDOT requested that RLN manage the number of individuals at the site and ensure that they use the proper highway access. RLN responded saying they no longer had control of the site. In response to public safety threats posed by the lack of control at the site and the growing occupancy, MnDOT issued a trespassing notice, not an eviction notice.

On another occasion, the Minnesota State Patrol (MSP), which is a division of the Minnesota Department of Public Safety (DPS), closed Highway 32 near RLN treaty camp for seven hours to ensure a safe demonstration zone for those wishing to demonstrate, and a safe work zone for those working on the replacement project. Following the road closure, MnDOT and RLN renegotiated the use of the MnDOT right-of-way to ensure compliance. Throughout all of these events, no cultural artifacts were disturbed by non-tribal members.

Presence of Police Dogs

We disagree with your assertion that local law enforcement used police dogs as a “show of intimidation”. On two occasions, once by the Thief River Falls Police Department and once by the Polk County Sheriff’s Office, a dog was brought to the site. On both occasions, the dogs remained inside the fenced Enbridge area away from protesters. Immediately upon learning that a police dog had been brought on site, state law enforcement asked the local police department to remove the animal out of respect for historical trauma related to the use of dogs in law enforcement. At no point was any dog involved with the trespass order for protesters. The first dog incident occurred hours before the issuance of a trespass order. The second dog incident occurred during an all-call for police resources. Additionally, our state law enforcement agencies have never brought a police dog to any site associated with Line 3 protests and actively discouraged the presence of police dogs. In fact, in one case, the MSP asked a third local law enforcement to remove a squad car marked “K9 Unit” that did not contain a police dog, to avoid misunderstanding and triggering fear among the protesters.

Arrests of Indigenous Leaders

Your letter incorrectly states that there “continue to be arrests of Indigenous leaders who are acting under tribal law.” Law enforcement personnel have worked closely with tribal governments and with members participating in lawful protest activities to protect their cultural practices and First Amendment rights, and relatively few of the individuals arrested in association with Line 3 protests have been members of Minnesota tribal

nations. Although state law enforcement has not targeted indigenous leaders or tribal members, social media has inaccurately continued this narrative. In fact, Indigenous leaders who have engaged in ceremony have been exempted from the arrest process when state law enforcement has been present.

Public Safety Costs and Use of Force

We must also correct your statement that “law enforcement entities in the region have received around \$2 million from Enbridge to pay for police activity against water protectors, which has included staggering levels of violence, tear gas, and rubber bullets.” First, both chambers of the Minnesota Legislature voted for final passage of the Public Safety Omnibus Bill on June 29, 2021. That bipartisan bill allows public safety costs associated with Line 3 to be reimbursed from an account funded by Enbridge, rather than imposing those costs on Minnesota taxpayers. These funds may be used only for reimbursing state agencies for officers’ salaries and for personal protective equipment and may not be used for equipment such as tear gas, rubber bullets, or extrication equipment. To date, state agencies have not yet received any funds from this account. When state agencies do request funds from the account, they will seek reimbursement only for allowable expenses (salaries and personal protective equipment).

More importantly, your implication that our agencies have used violence, tear gas, and rubber bullets is false. State law enforcement officers have not used any chemical or less-lethal tools in any interactions with Line 3 protestors along the line itself, in Saint Paul, or in any other locations. Further, there have been no known injuries of any demonstrators associated with any actions of state law enforcement personnel, and in fact state law enforcement personnel have taken specific actions to ensure the safety of demonstrators. We are aware of one incident, involving local law enforcement in Pennington County, where there was use of less-lethal munitions during a direct-action protest. State law enforcement officials have advised local police departments, including Pennington County, not to use such munitions.

Federal Government Involvement

As state agencies, we cannot speak for the federal government. That said, we are not aware of any federal Department Homeland Security personnel being assigned to surveillance activities around Line 3. We are aware of an incident when a federal Customs and Border Protection helicopter was flown over a protest area at low altitude. In immediate response to the incident, DNR and DPS sent the attached letter condemning these tactics. The state received assurance that this practice would not be repeated.

Other Issues

Human Trafficking

The Walz-Flanagan Administration takes human trafficking very seriously and is determined to prevent the crime and prosecute the offenders. Establishing the first ever

Missing and Murdered Indigenous Women and Relatives Office is a significant investment in the effort to end the targeting of Indigenous women, children, and two-spirited people. In addition, the Governor and Lt. Governor have prioritized statewide communication, training, and enforcement efforts to end sex trafficking across Minnesota.

Starting long before construction of the Line 3 replacement project, the Bureau of Criminal Apprehension (BCA), a division within DPS, has participated in a focused effort to reduce human trafficking in the areas around the pipeline. This has included numerous proactive operations to identify and apprehend individuals attempting to purchase women or girls for sex. These efforts have also included a robust statewide anti-trafficking campaign—“Your Call MN”—which includes, among other things, a hotline for reporting suspected sex trafficking. In 2020, the BCA trained over 450 law enforcement on identification and investigation of human trafficking. BCA also serves as a co-lead for the Human Trafficking subcommittee in partnership with the Tribes United Against Sex Trafficking (TRUST) Task Force.

As part of our efforts to address trafficking within the extraction industry specifically, BCA anti-trafficking staff have worked with Enbridge, its subcontractors, and Truckers Against Trafficking to ensure that pipeline workers receive training that vividly describes the harsh realities associated with human trafficking, clearly states that trafficking is illegal and makes clear that there is zero tolerance for the criminal behavior. Senior leaders from BCA, MSP, and MnDOT met with officers of the RLN Tribal Council on July 22, 2021 to discuss concerns around sex trafficking and impacts on indigenous women. Information from this meeting was provided to teams actively working to combat human trafficking. Just as it has for years, the BCA has been partnering directly with the TRUST Task Force and other law enforcement agencies to raise awareness, encourage prevention, and enforce sex trafficking laws. That work continues. We appreciate and share your concerns about human trafficking and look forward to working in partnership with you to put an end to human trafficking in our state.

Public Health and Cultural Resources

Your letter raises additional concerns about public health related to COVID-19 and Line 3 workers and the Tribal Cultural Resource Management survey team. While these issues do not fall under our agencies, we have included some additional information about those topics in the attached document.

Contact

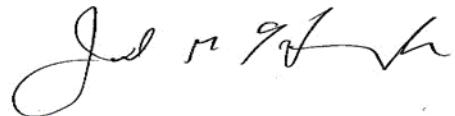
We take seriously our responsibility to follow the laws established by the Legislature. The courts—the arbiters of that law—have repeatedly affirmed that state agencies have followed the Legislature’s direction. Given the inaccurate statements made in your letter, we wanted to ensure that you had correct information pertaining to our agencies’ involvement in the Enbridge Line 3 replacement project. As noted above, we welcome the opportunity to discuss any remaining concerns or questions. To get in touch, please reach out to Assistant Commissioner Bob Meier (Bob.Meier@state.mn.us) at DNR,

Legislative Coordinator Jordan Haltaufderheid (Jordan.Haltaufderheid@state.mn.us) at DPS, or Legislative Liaison Erik Rudeen (Erik.Rudeen@state.mn.us) at MnDOT.

Sincerely,



Commissioner Sarah Strommen, DNR



Commissioner John Harrington, DPS



Commissioner Margaret Anderson Kelliher, MnDOT

Cc: Julie Rodriguez, White House Intergovernmental Affairs

Secretary Deb Haaland, Department of Interior

Jaime Pinkham, Acting Assistant Secretary of the Army for Civil Works, United States Army Corps of Engineers