

# Minnesota House of Representatives



# Minnesota State Senate

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Ave. NW  
Washington, DC 20500

February 5, 2021

Dear President Biden,

We are writing to thank you for your decision to rejoin the Paris Climate Accords and to reject the Keystone XL tar sands pipeline. These are encouraging steps to re-establish our country's credibility on climate change, perhaps the most serious challenge of our time. As state legislators from Minnesota, we write today to call your attention to another significant action your administration can take at this moment to address the climate crisis.

We are requesting that your administration halt construction of the Line 3 pipeline, a massive tar sands oil project in Northern Minnesota that is effectively a KXL clone. Line 3 would be the same diameter as KXL and would carry the same heavy crude through the U.S. Midwest with the same motive of enabling further expansion of the Canadian tar sands industry, a move that would leave "no possible pathway to achieving the Paris goals." [Climate On The Line report, OCI]

Line 3 is a new pipeline that Enbridge refers to as a replacement for an existing oil pipeline that has operated since 1968. The current line runs from Edmonton, Alberta, where it receives Canadian crude, to Superior, Wisconsin, transecting northern Minnesota and delivering crude to refineries and other pipelines for transport. Due to the deteriorating condition of the pipeline, it has been operating at a capacity of about 390,000 barrels per day carrying light crude oil from Canada.

Enbridge has proposed to construct a new and longer Line 3 that would be located in a largely different route in our state and expand capacity to at least 760,000 barrels per day of tar sands oil. The new Line 3, which Enbridge started constructing on November 30 despite pending legal challenges by a state agency and multiple Native nations, would have the greenhouse gas emissions equal to 50 coal plants or 193 million tons of CO<sub>2</sub>e per year. The societal cost of this project is estimated at \$287 billion.

The new Line 3 tar sands pipeline would cut a new corridor through a water rich area of northern Minnesota, with over 200 water crossings. The pipeline poses a risk to some of our cleanest water- both during construction and after from the risk of spills, degradations, and abandonment. This pipeline would cut through treaty territory where Ojibwe people hold rights to hunt, fish, and gather. These rights extend beyond individual reservation boundaries and are enumerated specifically in treaties with the United States, as such they are the "supreme law of the land." (U.S. Constitution, Art. VI, Cl. 2) The line is located in the watershed of many wild rice waters. Wild rice is a sacred and economic resource for the Ojibwe people.

Despite these risks, the Army Corps of Engineers issued a Clean Water Act Section 404 permit for the new Line 3 on November 23, 2020. On December 24, 2020, the Red Lake Nation, White Earth Nation and environmental

groups filed a lawsuit in federal court challenging the Corps' issuance of the 404 and other permits. The groups sought a preliminary injunction to halt construction.

Enbridge is moving quickly to build this pipeline before these and other state court cases can be heard. When the project was originally proposed, construction was estimated to take two years. Enbridge is now working around the clock with thousands of out of state workers to complete it in a projected six months, before legal challenges are likely to conclude, effectively denying Native nations and our state's public interest agency their day in court.

We urge that you direct the Army Corps of Engineers to immediately revoke the CWA section 404 permit for Line 3. Under Corps regulations (C.F.R. § 325.7), the Corps "may reevaluate the circumstances and conditions of any permit...either on his own motion, at the request of the permittee, or a third party... and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest." § 325.7(a). The Army Corps review was not appropriate for a project of this magnitude. It is clear that Line 3 should have had a federal EIS, as KXL did, and that the Trump administration's Finding Of No Significant Impact was willful negligence. There was no public comment period.

The Corps failed to consider whether the project might violate or encroach on treaty rights and other important interests of indigenous nations including, but not limited to, the Red Lake Band of Chippewa Indians and the White Earth Band of Ojibwe. The Corps failed to assess whether treaty rights, including off-reservation hunting, fishing, and gathering rights, would be affected by Line 3, even though the pipeline runs directly through territories in which these Tribes hunt, fish, and gather and which contain resources that are central to the Tribes' spiritual and cultural practices.

The Corps refused to evaluate the grave risks and impacts of pipeline oil spills, including spills into wetlands, streams, and rivers under Corps jurisdiction. The Corps was presented with hundreds of pages of evidence regarding the risks of oil spills, including spills from Enbridge pipelines such as the Line 6(b) disaster in Kalamazoo, Michigan, which spilled over 800,000 gallons and cost over a billion dollars to clean up. Federal courts have repeatedly recognized the Corps' obligation to consider the risks of oil spills, most recently in the litigation over the Dakota Access Pipeline. See, e.g., *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 133-34 (D.D.C. 2017) (EA inadequate because it did not describe the potential impacts of an oil spill on specific tribal hunting and fishing rights). Despite this clear legal obligation, the Corps refused to conduct this analysis here.

Similarly, the Corps was presented with voluminous evidence on the climate change impacts of the Line 3 expansion, including the life-cycle greenhouse gas emissions attributable to the additional tar sands crude oil that would be extracted, transported, and burned as a result of the project. Courts have recognized federal agencies' obligation under NEPA to evaluate the climate impacts of oil and gas pipelines they approve. See, e.g., *Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2017). Nonetheless, the Corps ignored the pipeline's climate impacts as it ignored oil spill risks, arguing that it was outside the scope of its authority.

We ask you to take this action to send a strong global message that the United States is taking firm steps again to address climate change, support our Tribal governments and protect the Mississippi River and Lake Superior watersheds. Thank you very much for your consideration and your commitment to prioritizing federal action to address the climate crisis.

Sincerely,

Representative Patty Acomb  
Representative Esther Agbaje  
Representative Jamie Becker-Finn  
Representative Liz Boldon  
Representative Jim Davnie  
Representative Sandra Feist  
Representative Cedrick Frazier  
Representative Aisha Gomez

Representative Emma Greenman  
Representative Jessica Hanson  
Representative Hodan Hassan  
Representative Athena Hollins  
Representative Frank Hornstein  
Representative Sydney Jordan  
Representative Heather Keeler  
Representative Fue Lee  
Representative Todd Lippert  
Representative Jamie Long  
Representative Carlos Mariani  
Representative Sandra Masin  
Representative Rena Moran  
Representative Kelly Morrison  
Representative Mohamud Noor  
Representative Liz Reyer  
Representative Ruth Richardson  
Representative John Thompson  
Representative Samantha Vang  
Senator Scott Dibble  
Senator Chris Eaton  
Senator Omar Fateh  
Senator Mary Kunesh  
Senator John Marty  
Senator Jennifer McEwen  
Senator Erin Murphy  
Senator Sandra Pappas  
Senator Lindsey Port  
Senator Patricia Torres Ray  
Senator Chuck Wiger