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**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

WHITE EARTH NATION, HONOR
THE EARTH, INDIGENOUS
ENVIRONMENTAL NETWORK,
MINNESOTA CONSERVATION
FOUNDATION, MN350, CENTER
FOR BIOLOGICAL DIVERSITY,
SIERRA CLUB, and NATIONAL
WILDLIFE FEDERATION,

Plaintiffs,

vs.

JOHN KERRY, in his official
capacity as Secretary of State, and the
UNITED STATES DEPARTMENT
OF STATE,

Defendants.

Case No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this case to challenge a U.S. Department of State (“State Department”) decision to approve construction and operation of a new border-crossing crude oil pipeline without first completing a review of the pipeline’s environmental impacts in accordance with the National Environmental Policy Act (“NEPA”) and State Department regulations.

2. Enbridge Energy, Limited Partnership (“Enbridge”) is proposing to construct and operate a new 36-inch diameter pipeline to import heavy tar sands crude oil from Alberta, Canada to its terminal facilities in Superior, Wisconsin (the “New Pipeline”). However, Enbridge will or already has constructed a 17.5-mile segment of the New Pipeline that crosses the U.S.-Canada border with 34-inch diameter pipe (the “New Border Segment”), claiming it is an existing pipeline known as Line 3 and subject to a permit that it claims allows unlimited crude oil imports.

3. Enbridge also owns and operates the Line 67 pipeline, which was known during its development phase as the “Alberta Clipper.” Enbridge is currently seeking authority from the State Department to increase the amount of heavy tar sands oil it imports on Line 67 from 450,000 barrels per day (“bpd”) to 800,000 bpd (the “Line 67 Expansion Project”). Pursuant to NEPA, the State Department is in the process of involving the public and evaluating the environmental impacts from importing this additional oil on Line 67. However, Enbridge refuses to wait for completion of the NEPA process, and instead plans to divert 800,000 bpd from Line 67 onto the New Border Segment and then back onto Line 67 to circumvent the ongoing NEPA review of the Line 67 Expansion Project (the “Bypass Project”).¹

4. The State Department’s authorization of the New Pipeline and the Bypass Project in the absence of a NEPA review violates NEPA’s fundamental requirement to “look before you leap.” The State Department further violated NEPA by allowing and authorizing Enbridge to proceed with its Line 67 Expansion Project prior to the completion of the ongoing NEPA review.

¹ See Exhibit A, Plaintiffs’ diagram of the New Pipeline and the Bypass Project.

5. Plaintiffs request that this Court: a) enter a declaratory judgment that the State Department approved the New Pipeline and Bypass Project in violation of NEPA and the APA; and b) issue injunctive relief enjoining the Bypass Project and construction of the New Pipeline unless and until the State Department complies fully with NEPA.

6. Plaintiffs Center for Biological Diversity and Sierra Club also bring this case to challenge the State Department's failure to comply with related requests for information under the Freedom of Information Act ("FOIA").

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action by virtue of the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, FOIA, 5 U.S.C. § 552, and 28 U.S.C. § 1331 (federal question jurisdiction).

8. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a). This Court may grant declaratory relief and additional relief, including an injunction, pursuant to 28 U.S.C. §§ 2201, 2202; 5 U.S.C. §§ 701-706, and 5 U.S.C. § 552.

9. Venue is proper in this judicial district and in this Court pursuant to 28 U.S.C. § 1391(e)(1)(b) because a substantial part of the events or omissions giving rise to the claim occurred here, and pursuant to 5 U.S.C. § 552(a)(4)(B).

THE PARTIES

10. Plaintiff WHITE EARTH NATION is a federally recognized Indian tribe, which occupies a Reservation in Northwest Minnesota. The White Earth Reservation was established by the 1867 Treaty between the United States and the Chippewa Indians of the Mississippi (16 Stat. 719). The governing body of the White Earth Nation is a successor in interest tribal

government to the signatories of the 1855 Treaty of Washington between the United States and the Mississippi, Pillager, and Winnibigoshish Bands of Chippewa Indians (10 Stat. 1165). White Earth Nation tribal members enjoy hunting, fishing, gathering, and other rights in the 1855 Treaty ceded territory.

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a national, nonprofit conservation organization with more than 50,000 members dedicated to the protection of endangered species, biodiversity, and ecosystems throughout the world. The Center works through science, law, and creative media to protect the lands, waters, and climate that species need to survive. The Center has an office in Duluth, Minnesota, and hundreds of members across the state.

12. Plaintiff SIERRA CLUB is a national nonprofit organization of over one million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; practicing and promoting the responsible use of the earth’s ecosystems and resources; educating and enlisting humanity to protect and restore the quality of the natural and human environment; and using all lawful means to carry out these objectives. The Sierra Club has chapters and members in each of the states through which the New Pipeline will pass, and in the state(s) where the refining of the tar sands crude would take place. The Sierra Club’s concerns encompass the protection of wildlands, wildlife habitat, water resources, air, climate change, public health and the health of its members, all of which stand to be affected by the New Pipeline. The Sierra Club’s headquarters are located at 85 2nd Street, 4th Floor, San Francisco, CA 94109-3441.

13. Plaintiff HONOR THE EARTH is a national Native American environmental organization which since 1992 has worked on issues of fossil fuels, extreme extraction and

sustainability. The organization is headquartered on the White Earth reservation in northern Minnesota, and has leadership comprised of tribal members from the Anishinaabeg of northern Minnesota. The organization is committed to a sustainable economy predicated on ecological and cultural vitality.

14. Plaintiff INDIGENOUS ENVIRONMENTAL NETWORK (“IEN”) is a non-profit organization that works with indigenous individuals and grassroots community groups to protect their sacred sites, land, water, air, natural resources, and the health of their people and all living things, and to building economically sustainable communities. IEN’s work encompasses a range of environmental and economic justice issues that impact the lands and cultures of indigenous peoples and individuals, including mining and oil development on and near indigenous lands; soil and water contamination from energy exploration and development; climate change; water conservation; and the transboundary movement of hazardous materials along the U.S. borders with Canada and Mexico. IEN’s headquarters is located at 219 Bemidji Avenue, Bemidji, MN 56601.

15. Plaintiff MINNESOTA CONSERVATION FEDERATION (“MCF”) is a Minnesota-based common sense conservation organization made up of hunters, anglers, and others who are dedicated to the enjoyment, education, and ethical use of our natural resources. MCF is committed to saving and faithfully defending from waste the natural resources of our country, its air, soil and minerals, its forests, waters, and wildlife. MCF is the Minnesota affiliate of National Wildlife Federation. MCF is committed to protecting wildlife and habitat from the impacts of major development projects, including impacts like oil spills. MCF has an office at 542 Snelling Avenue, #104, Saint Paul, MN 55116.

16. Plaintiff MN350 is a Minnesota nonprofit organization with approximately 2,500 members and supporters dedicated to returning our common climate to the safe, sane level of 350ppm of CO₂ or lower, curbing expanded use of fossil fuels, and the adoption of clean energy. Further, MN350 is also focused on changing the demand for energy, while also creating alternative ways to live in a sustainable, just, and fulfilling world. MN350 has members and supporters throughout Minnesota, including in counties that could be impacted by the New Pipeline. MN350's concerns encompass reducing impacts to our climate, protection of water resources, clean air, public health and the health of its members, all of which stand to be affected by the pipeline. MN350's office is located at 2104 Stevens Avenue South, Minneapolis MN 55404.

17. MN350 brings this action on behalf of its members who live, work, and recreate in areas that will be affected by climate, air and/or water pollution from the New Pipeline, its facilities, and refineries processing oil transported by the New Pipeline, and by the deleterious impacts of increased emissions of greenhouse gases resulting from the refining and end-use of tar sands crude oil. These members face increased risk of harm to their health, recreational, economic, and aesthetic interests as a result of the State Department's decision to allow a project with significant environmental impacts to proceed without fully analyzing and considering those impacts. The State Department's failure to provide required information and analyze and/or mitigate reasonably foreseeable direct, indirect, and cumulative impacts of the New Pipeline has also deprived MN350's members of their right to participate fully in the process leading to the issuance of the Presidential Permit.

18. Plaintiff NATIONAL WILDLIFE FEDERATION ("NWF") is the nation's largest non-profit conservation advocacy and education organization. NWF has over one million

individual members, including approximately 18,700 and 22,500 members in Minnesota and Wisconsin respectively, and affiliate organizations in 49 states and territories, including North Dakota, Minnesota, and Wisconsin. NWF's mission is to inspire Americans to protect wildlife for our children's future. NWF also works to protect of wildlife, wild places, and natural resources from the impacts of fossil fuel development projects such as oil spills and climate change. NWF's headquarters is located at 11100 Wildlife Center Drive, Reston, VA 20190.

19. Plaintiffs bring this case on their own behalf and on behalf of their members who live, work, recreate in, and otherwise use and enjoy areas that will be affected by air and/or water pollution from the New Pipeline, its facilities, and refineries processing oil transported by the New Pipeline, and by the deleterious impacts of increased emissions of greenhouse gases resulting from the refining and end-use of tar sands crude oil. Plaintiffs' members use and enjoy areas that may be adversely affected by the New Pipeline for fishing, hunting, camping, photography, and for engaging in other environmental, vocational, scientific, educational, religious, cultural, aesthetic, and recreational activities. Plaintiffs' members intend to continue to use and enjoy these areas frequently and on an ongoing basis in the future, including this winter and in the spring and summer of 2015.

20. The New Pipeline will run directly through the 1855 Treaty Territory, and Plaintiffs' White Earth Nation, Honor the Earth, and Indigenous Environmental Network have numerous members who have long lived and worked within the 1855 Treaty Territory, including in close proximity to the route for the New Pipeline. These members engage in numerous activities within the 1855 Treaty Territory, including hunting, fishing, and gathering; and engaging in spiritual and cultural practices. Native plants, animals, and sites within the 1855 Treaty Territory traditionally have been important to members of White Earth Nation, Honor the

Earth, and Indigenous Environmental Network for subsistence, spiritual, medicinal, and other purposes.

21. Plaintiffs' and Plaintiffs' members' injuries would be redressed by the relief sought.

22. Defendant JOHN KERRY is the Secretary of State and is sued in his official capacity. Pursuant to Executive Order 13337, 69 Fed. Reg. 25299 (April 30, 2004), Secretary Kerry is responsible for determining whether to issue permits for the construction, connection, operation or maintenance at the borders of the United States of facilities for the exportation or importation of petroleum products or other fuels to or from a foreign country. In carrying out these duties, Secretary Kerry must ensure compliance with the requirements of NEPA.

23. Defendant UNITED STATES DEPARTMENT OF STATE is a federal agency whose chief administrator is the Secretary of State. The State Department processes applications for Presidential permits for the construction, operation and maintenance of facilities on the United States-Canada border. In carrying out its responsibilities, the State Department must comply with applicable requirements of NEPA and the APA.

LEGAL BACKGROUND

National Environmental Policy Act

24. The National Environmental Policy Act is our "basic national charter for the protection of the environment." 40 C.F.R. § 1500.1. Congress enacted NEPA "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation." 42 U.S.C. § 4321.

25. The Council on Environmental Quality (CEQ), established under NEPA within the Executive Office of the President, is responsible for coordinating federal environmental efforts and has promulgated regulations implementing NEPA. 40 C.F.R. §§ 1500-1508.

26. “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and *before* actions are taken.” 40 C.F.R. § 1500.1(b) (emphasis added).

27. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a “detailed statement” that discusses the purpose and needs for, environmental impacts of, and reasonable alternatives to, all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental impact statement or EIS. To determine whether a federal action will result in significant environmental impacts and requires an EIS, the federal agency may first conduct an environmental assessment (“EA”). 40 C.F.R. § 1501.4. If a federal agency makes a finding of no significant impact, it may avoid conducting an EIS. *Id.*

28. The EIS process is intended “to help public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment” and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b)-(c). “Public scrutiny” of this information is “essential to implementing NEPA.” *Id.* Where the government has acted prior to fulfilling its NEPA obligations, projects authorized by government action must be suspended until NEPA’s requirements are met.

29. Agencies must integrate NEPA “at the earliest possible time to insure the planning and decisions reflect environmental values.” 40 C.F.R. § 1501.2.

30. Agencies shall not commit resources prejudicing the selection of alternatives prior to making a final decision. 40 C.F.R. § 1502.2(f). An EIS must assess the environmental impacts of proposed actions, rather than justifying decisions already made. *Id.* at § 1502.2(g).

31. An EIS must be prepared early enough “so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made. 40 C.F.R. § 1502.5.

32. An agency must “specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. Examination of alternatives is the “heart of the environmental impact statement” and must include a “no action” alternative. 40 C.F.R. § 1502.14(d). The “no action” alternative is foreclosed and meaningless if action is already occurring.

33. The examination of alternatives must also include “appropriate mitigation measures not already included in the proposed action or alternatives.” 40 C.F.R. § 1502.14(f).

34. An agency must not prejudice or foreclose important choices during an ongoing NEPA review. Thus, an agency must take “appropriate action to insure that the objectives and procedures of NEPA are achieved” when a non-Federal applicant is “about to take an action within the agency’s jurisdiction” that would “[h]ave an adverse environmental impact” or “[l]imit the choice of reasonable alternatives” before the agency issues a record of decision on a project. 40 C.F.R. § 1506.1(a),(b).

35. Actions that are connected or result in cumulative impacts when viewed with other proposed actions should be discussed in the same EIS. 40 C.F.R. § 1508.25.

36. An agency’s NEPA obligations do not end with the initial NEPA analysis. NEPA imposes a mandatory and continuing duty to supplement previous environmental documents. If

substantial changes are made, or there are new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, the agency must prepare a supplement to the draft or final EIS. *Id.* § 1502.9(c).

37. The State Department’s own NEPA regulations, which incorporate and supplement the CEQ regulations, are set forth at 22 C.F.R. §§ 161.1-161.12.

Executive Order 13337 and Executive Order 11423

38. Pipelines that cross into the U.S. from a neighboring country are subject to State Department permitting authority under Executive Order 13337 and Executive Order 11423. Executive Order 13337 requires the Secretary of State to determine whether or not “the importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country” made possible by a pipeline project “serves the national interest” before granting a permit.

Administrative Procedure Act

39. The APA provides a right of action against final agency actions and decisions. 5 U.S.C. §§ 702, 704.

40. Reviewing courts shall hold unlawful and set aside agency actions or decisions that are “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)(B)(C).

41. Reviewing courts shall also compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

Freedom of Information Act

42. Upon request, FOIA requires agencies of the federal government to conduct a reasonable search for requested records and release them to the public, unless one of nine specific statutory exemptions applies. 5 U.S.C. § 552(a)(3), (b).

43. An agency must respond to a party making a FOIA request within 20 working days, notifying the party of at least the agency's determination whether or not to fulfill the request, the reasons for that determination, and the requestor's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i). A requestor has exhausted administrative remedies "if the agency fails to comply with the" twenty day deadline. *Id.* § 552(a)(6)(C)(i). In that event, FOIA authorizes the requester to invoke the jurisdiction of a federal court to obtain the requested records. *Id.* § 552(a)(4)(B).

44. In "unusual circumstances," an agency may delay its response to a FOIA request but it must provide notice and must also provide "the date on which the determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B)(i). The agency cannot specify a date "that would result in an extension for more than ten working days." *Id.*

45. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

46. This Court may assess against the United States reasonable attorney fees and litigation costs incurred from a FOIA suit where the "complainant has substantially prevailed". 5 U.S.C. § 552(a)(4)(E)(i).

FACTS

The New Pipeline Project

47. Enbridge owns and operates pipelines at issue in this case. The pipelines cross the U.S.-Canada border and are therefore subject to the State Department's authority over the construction and operation of pipeline facilities that cross an international border.

48. In March 2014, Enbridge announced its plan to construct an entirely new crude oil pipeline (the New Pipeline) that is able to import 800,000 bpd of heavy tar sands crude oil from Alberta, Canada to its terminal facility in Superior, Wisconsin. This New Pipeline will be constructed of new 36-inch diameter pipe except for a 17.5-mile segment that crosses the U.S.-Canada border (the New Border Segment). The New Border Segment has or will be constructed with 34-inch diameter pipe.

49. Enbridge claims that the New Pipeline is Line 3, an existing 34-inch diameter pipeline subject to a 1991 Presidential Permit. This Presidential Permit, however, authorizes "an existing 34-inch pipeline" and "any land, structures, installations or equipment appurtenant thereto . . . in the United States." Enbridge is in fact constructing an entirely new pipeline that will not follow the same route as Line 3 through parts of Minnesota. Enbridge will be abandoning the existing Line 3 pipeline after it completes the New Pipeline.

50. The State Department has previously acknowledged that the environmental impacts from constructing a pipeline of the size and capacity of the New Pipeline are significant and require an environmental impact statement ("EIS") pursuant to NEPA.

51. On June 3, 2014, Enbridge met privately with State Department officials to propose a "Bypass Project" (see below), which would import up to 800,000 bpd of heavy tar sands crude oil on the New Border Segment.

52. By letter dated July 24, 2014, the State Department determined that Enbridge could operate the New Border Segment as proposed without further authorization or analysis of the environmental impacts from the State Department.

53. Consequently, the State Department has approved the New Pipeline without first conducting any review of the environmental impacts as required by NEPA and State Department regulations.

54. The New Pipeline is not authorized by any existing State Department permits.

The Enbridge Line 67 Bypass Project

55. The Line 67 pipeline, known during its development phase as the “Alberta Clipper,” began operation in 2010 in the same right-of-way at the U.S.-Canada border as is proposed for the New Pipeline. Enbridge operates Line 67 pursuant to a 2009 Presidential Permit which, in conjunction with its accompanying documents, limits its capacity to import heavy tar sands crude oil to an annual average of 450,000 barrels per day (“bpd”). Although the 2009 Presidential Permit does not limit capacity on its face, the State Department has determined that Enbridge would need additional authority to import more than 450,000 bpd over Line 67.

56. In 2012, Enbridge sought authority from the State Department to increase the amount of crude oil it can import over Line 67 to an annual average of 800,000 bpd (the Line 67 Expansion Project). The Line 67 Expansion would not require any physical changes to the Line 67 pipe segments themselves. Rather, Enbridge would install additional pumps at new and existing pump stations. These pumps would increase the internal pressure of the pipeline to force a significantly higher volume of oil through the pipeline on a daily basis.

57. Both Enbridge and the State Department consider this throughput increase a change in the operation of Line 67 at the U.S.-Canada border that requires an amended Presidential Permit.

58. The State Department has acknowledged that the environmental impacts from the throughput increase are significant and were not considered in its earlier Final Environmental Impact Statement for Line 67 (“FEIS”). Therefore, the State Department has determined that in order to comply with NEPA it must first complete a Supplemental Environmental Impact Statement (“SEIS”) before authorizing the Line 67 Expansion Project.

59. Enbridge is unwilling to wait for the State Department to complete the SEIS for the proposed Line 67 Expansion Project before Enbridge proceeds with implementing the proposed project. Enbridge therefore plans to build the New Border Segment and use it to bypass the SEIS process, which is still ongoing.

60. Construction of the entire New Pipeline will take several years. However, on information and belief, the New Border Segment is under construction or complete. Enbridge plans to rely on its alleged authority in the existing Presidential Permit for Line 3 to import 800,000 bpd on the New Border Segment, in order to bypass the ongoing State Department NEPA review of Enbridge’s Line 67 Expansion Project.

61. This “Bypass Project” generally entails diverting flow from Line 67 onto the New Border Segment north of the border and then re-routing it back onto Line 67 south of the border and using the diversion to operate Line 67 at up to 800,000 bpd while the SEIS process is occurring. The Bypass Project will allow Enbridge to operate Line 67 at its full 800,000 bpd capacity prior to completion of NEPA review of that expansion. In all respects, except for the

diversion and construction of the New Border Segment, the Bypass Project will be the operational and functional equivalent of the proposed Line 67 Expansion.

62. On July 24, 2014, the State Department determined that the Bypass Project did not require further approval, thereby authorizing Enbridge to construct the New Border Segment and operate it at a level of 800,000 bpd.

63. Like the proposed Line 67 Expansion Project, the Bypass Project will result in significant environmental impacts, including from importing up to 800,000 bpd of heavy tar sands crude oil.

64. As with the New Pipeline, the State Department has not completed any NEPA review of the environmental impacts from the Bypass Project.

65. Once the Bypass Project is operational, shippers and refineries will rely on the additional volumes of oil and the State Department will face increased pressure to approve the Line 67 Expansion Project.

Adverse Impacts

66. The interests of Plaintiffs and Plaintiffs' members have been and will continue to be adversely affected by the State Department's decision that authorizes the New Pipeline and Bypass Project and allows the significant expansion of tar sands oil crossing North Dakota, Minnesota and Wisconsin to move forward prior to analyzing and considering the environmental impacts. Plaintiffs' members face increased risk of harm to their health, recreational, economic, aesthetic, cultural, traditional, and other interests as a result of the Department's decision. These are actual, concrete interests caused by the State Department's failure and refusal to comply with NEPA and FOIA as alleged herein.

67. Construction of the New Pipeline and Bypass Project will likely degrade water quality and damage aquatic habitat. Construction activity will likely increase sedimentation and erosion and, in some cases, reduce in-stream water flow. It could affect fisheries resources by altering or destroying habitat, reducing spawning success, and introducing toxic materials into aquatic ecosystems.

68. The construction of the New Pipeline project will also harm wildlife resources and plant communities through cutting, clearing, wildlife habitat fragmentation, and the introduction of noxious weeds.

69. Operation of the New Pipeline and Bypass Project present significant risks to the environment and human health due to operational leaks and spills. Enbridge reports over 30 incidents of leaks and spills on its existing pipeline running through northern Minnesota over the last decade. In 2010, an Enbridge pipeline suffered a catastrophic failure near Kalamazoo, Michigan and spilled over 800,000 gallons of tar sands oil into a tributary of the Kalamazoo River. On July 12, 2012, another Enbridge pipeline failed near Grand Marsh, Wisconsin spilling an estimated 37,800 gallons of crude oil into the environment. Plaintiffs' members who live and/or recreate near the proposed route for the New Pipeline are aware of these incidents, and rely on a public NEPA process to inform themselves and the decisionmakers of these risks they face and the measures Enbridge will take to mitigate those risks.

70. The State Department's failure to comply with the NEPA denies Plaintiffs and Plaintiffs' members the ability to adequately participate in the required public review process before the challenged project can proceed. These violations also prevent Plaintiffs access to information concerning the purpose and need, design, construction, operation, and environmental impacts of the challenged project.

71. Members of Plaintiffs Center for Biological Diversity and Sierra Club and their interests in this area are further harmed by the State Department's failure and refusal to respond to the organization's related FOIA requests.

Sierra Club Freedom of Information Act Requests

72. On March 25, 2014, Sierra Club submitted a FOIA request to the State Department seeking release of records pertaining to Enbridge's Line 3 pipeline.

73. On April 9, 2014, the State Department responded to Sierra Club's March 25, 2014 FOIA request by noting it received the request and that it was processing it. The State Department also stated that unusual circumstances could cause delay. The State Department did not say whether it would grant or deny the request.

74. Sierra Club emailed the State Department on September 2, 2014 and on October 23, 2014 requesting the status of its March 25, 2014 FOIA request.

75. On both occasions, the State Department responded to Sierra Club that it is still processing the request.

76. To date, the State Department has not provided Sierra Club with a single record, an explanation for the delay, or an estimated date as to when it will decide to approve or deny the March 25, 2014 FOIA request.

77. On September 5, 2014, Sierra Club submitted a FOIA request to the State Department, seeking release of records regarding Enbridge's Line 3, Line 67, and the Bypass Project.

78. The State Department responded noting that it received the request and that it was processing it. The State Department also stated that unusual circumstances could cause delay. The State Department did not state whether it would grant or deny the FOIA request.

79. Sierra Club emailed the State Department on October 23, 2014, asking for the status of its September 5, 2014 FOIA request.

80. On October 29, 2014, the State Department provided Sierra Club with an estimated completion date of May 2015, which is well beyond the 20-day limit for the State Department to issue its determination and beyond the 10-day limit for an extension caused by unusual circumstances.

81. To date, the State Department has not provided Sierra Club with a single record, an explanation for the delay, or an adequate estimated date as to when it will decide whether to grant or deny the request.

Center for Biological Diversity Freedom of Information Act Request

82. On May 30, 2014, the Center for Biological Diversity submitted a FOIA request to the State Department seeking the release of records regarding the New Pipeline project.

83. The State Department responded to the Center on June 12, 2014 by letter stating that it received the request and that it was processing it. The State Department also stated that unusual circumstances could cause delay. The State Department did not state whether it would grant or deny the request

84. To date, the State Department has not provided the Center for Biological Diversity with a single record, an explanation for the delay, or an estimated date as to when it will decide whether to grant or deny the request.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of NEPA and the APA: The New Pipeline and New Border Segment

85. Plaintiffs incorporate and re-allege all allegations contained in the preceding paragraphs.

86. The State Department's July 24, 2014 decision to approve construction and operation of the New Border Segment to import 800,000 bpd constitutes approval and authorization of the New Pipeline, including the New Border Segment.

87. The State Department's July 24, 2014 decision authorized Enbridge to proceed with the New Border Segment, which will result in significant environmental impacts through new ground disturbance and by substantially increasing the amount of heavy tar sands crude oil transported across North Dakota, Minnesota, and into Wisconsin; and by facilitating construction of the entire New Pipeline.

88. The State Department's July 24, 2014 decision therefore constitutes major federal action under NEPA. 40 C.F.R. § 1508.18.

89. The New Border Segment, New Pipeline, Bypass Project, and Line 67 Expansion are all connected and cumulative actions, requiring their consideration by the State Department in a single EIS. 40 C.F.R. §§ 1501.7, 1508.25.

90. The State Department violated NEPA by failing to require an EA or EIS to involve the public and analyze the potential environmental impacts that may result from the construction and operation of the New Pipeline, including the New Border Segment, prior to authorizing and allowing this project to proceed. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§

1500.1(b), 1501.4, 1501.2, 1502.2(f), 1502.5, 1502.14(d), 1506.1(a)-(b), 1508.25; 22 C.F.R. §§ 161.1-12.

91. The State Department’s failure to prepare any NEPA analysis for the New Pipeline, including the New Border Segment, constitutes agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706(1). Moreover, the State Department’s approval and authorization of the New Pipeline, including the New Border Segment, is arbitrary, capricious, an abuse of discretion, not in accordance with NEPA, and without observance of the procedures required by NEPA. 5 U.S.C. § 706(2).

SECOND CLAIM FOR RELIEF

Violation of NEPA and the APA: Bypass Project and Line 67 Expansion Project

92. Plaintiffs incorporate and re-allege all allegations contained in the preceding paragraphs.

93. NEPA requires the State Department to take “appropriate action to insure the objectives and procedures of NEPA are achieved.” 40 C.F.R. § 1506.1(b). This requirement is triggered when “an agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency’s jurisdiction” that would have “an adverse environmental impact” or “[l]imit the choice of reasonable alternatives” until the agency issues a record of decision on any action requiring an EIS. *Id.* § 1506.1(a),(b).

94. The Bypass Project is within the State Department’s jurisdiction because it involves construction and operation of a cross-border pipeline to increase imports of crude oil into the United States.

95. The Bypass Project will have adverse environmental impacts. The State Department has determined that environmental impacts from the Line 67 Expansion Project are significant within the meaning of NEPA. The Bypass Project would allow Line 67 to operate at the maximum capacity being considered in the proposed Line 67 Expansion Project, and therefore result in environmental impacts including all of the impacts of the proposed Line 67 Expansion Project.

96. The State Department's approval of the Bypass Project also eliminates the choice of reasonable alternatives for the proposed Line 67 Expansion Project. By approving an annual average delivery of 800,000 bpd at the terminus of Line 67 in Superior, the State Department will have prejudiced or substantially foreclosed the possibility of choosing the "no action alternative," which is the heart of NEPA's environmental review. 40 C.F.R. § 1502.14(d). Once the Bypass Project is operational, Line 67 will already be operating at the increased level supposedly being evaluated by the NEPA process for the Line 67 Expansion. Shippers and refineries will rely on the additional volumes of oil, and the State Department will face undue pressure to approve the Line 67 Expansion Project.

97. The State Department has taken no action to insure NEPA's objectives and procedures are achieved. Its approval of the Bypass Project insures that NEPA's fundamental requirement to "look before you leap" will not be met.

98. In allowing and authorizing the Bypass Project to proceed prior to the completion of the ongoing NEPA process for the Line 67 Expansion Project, the State Department has violated and remains in violation of NEPA and State Department regulations. 40 C.F.R. §§ 1500.1(b), 1501.2, 1502.2(f)-(g), 1502.5, 1506.1, 1508.25; 22 C.F.R. §§ 161.1-12. The State Department's approval and authorization of the Bypass Project is arbitrary, capricious, an abuse

of discretion, not in accordance with NEPA, and without observance of the procedures required by NEPA. 5 U.S.C. § 706(2).

99. Moreover, the State Department's failure to take appropriate action to insure that the objectives and procedures of NEPA are achieved for the Line 67 Expansion Project and the Bypass Project constitutes agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706(1).

THIRD CLAIM FOR RELIEF

Violation of FOIA: Failure to Provide Responsive Records

100. Plaintiffs Center for Biological Diversity and Sierra Club incorporate and re-allege all allegations contained in the preceding paragraphs.

101. By failing to provide the records responsive to the Center for Biological Diversity's May 30, 2014 and Sierra Club's March 25, 2014 and September 5, 2014 FOIA requests the State Department is violating the FOIA and its own implementing regulations. 5 U.S.C. § 552(a)(3)(A); 22 C.F.R. § 171.12(d).

102. By failing to respond to the Center for Biological Diversity's May 30, 2014 FOIA request and Sierra Club's March 25, 2014 and September 5, 2014 FOIA requests within the requisite 20 day period with a determination, reasons for that determination, and a notification of the right to appeal, the State Department violated FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

103. In the alternative, if the State Department is claiming delay due to unusual circumstances, it is still in violation of FOIA and its own implementing regulations for not providing the Center and Sierra Club with a written notice of an extension and for not providing an estimated date within the allowable 10 day extension period upon which the State Department

will make its determination. 5 U.S.C. § 552(a)(6)(B)(i); 22 C.F.R. §171.12(d). By not notifying the Center and Sierra Club that it cannot process the request within the extended time period due to unusual circumstances and not providing these organizations an opportunity to narrow its request, the State Department is in violation of FOIA. 5 U.S.C. § 552(a)(6)(B)(i).

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act:

104. Plaintiffs Center for Biological Diversity and Sierra Club incorporate and re-allege all allegations contained in the preceding paragraphs.

105. The State Department has failed to act in an official capacity under color of legal authority by failing to comply with the mandates of FOIA consequent to its failure and refusal to issue a timely final determination on the Center and Sierra Club's information request.

106. The State Department has unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to provide to the Center and Sierra Club documents responsive to their information requests that are not within the scope of any of FOIA's disclosure exemptions.

107. Plaintiffs have been adversely affected and aggrieved by the State Department's failure to comply with the mandates of FOIA. The State Department's failure and refusal to provide the Center and Sierra Club documents responsive to their information requests that are not within the scope of any of FOIA's disclosure exemptions has injured the Center and Sierra Club's interests in public oversight of governmental operations and constitute a violation of the State Department's statutory duties under the APA.

108. The Center and Sierra Club have suffered a legal wrong as a result of the State Department's failure to comply with the mandates of FOIA. The State Department's failure and refusal to provide to the Center and Sierra Club documents responsive to their information requests that are not within the scope of any of FOIA's disclosure exemptions has injured the Center and Sierra Club's interests in public oversight of governmental operations and constitute a violation of the State Department's statutory duties under the APA.

109. The State Department's failure and refusal to provide to the Center and Sierra Club documents responsive to their information requests that are not within the scope of any of FOIA's disclosure exemptions has injured the Center and Sierra Club's interests in public oversight of governmental operations and constitute a violation of the State Department's statutory duties under the APA, constitutes agency action unlawfully withheld and unreasonably delayed and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

110. Alternatively, the State Department's failure and refusal to provide to Plaintiffs documents responsive to their information request that are not within the scope of any of FOIA's disclosure exemptions has injured the Center and Sierra Club's interests in public oversight of governmental operations and constitute a violation of Defendant's statutory duties under the APA, is in violation of FOIA's statutory mandates and is therefore arbitrary, capricious, or an abuse of discretion and not in accordance with law and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the State Department is in violation of NEPA and the APA;

B. Set aside the State Department's approval and authorization of the Bypass Project and New Pipeline Project, including the New Border Segment;

C. Issue preliminary and permanent injunctions prohibiting the State Department from authorizing or allowing any new construction, ground disturbing activities, new or modified pump stations, or operation of the Line 67 Expansion Project, the Bypass Project, and the New Pipeline Project until the Department has complied with NEPA and State Department regulations by completing the SEIS for the Line 67 Expansion Project, and the required NEPA review of the Bypass Project and New Pipeline Project, and issuing a Record of Decision for each;

D. Declare that the State Department is in violation of FOIA regarding the FOIA requests by Plaintiffs Center for Biological Diversity and Sierra Club, and compel the State Department to promptly respond to the outstanding requests for information;

E. Award to Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and FOIA, 5 U.S.C. § 552(a)(4)(E);

F. Grant Plaintiffs such further relief as may be just, proper, and equitable.

Respectfully submitted,

Dated: November 11, 2014.

/s/ Marc D. Fink
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