



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Enbridge Intervenes In Suit To Block Minn. Pipeline Project

By **Emma Whitford**

Law360 (January 11, 2021, 4:53 PM EST) -- A D.C. federal court on Saturday allowed energy company Enbridge to intervene in a December lawsuit brought by tribes and environmental groups against the U.S. Army Corps of Engineers to stop its \$2.9 billion pipeline replacement project in Minnesota.

Enbridge's Jan. 5 motion to intervene in the case satisfied all of the requirements under Federal Rule of Civil Procedure 24(a), U.S. District Judge Colleen Kollar-Kotelly wrote in a short Jan. 9 opinion. Not only does Enbridge have a "clear interest" in the case's outcome, she found, but the federal defendants can't fully represent its interests.

"Although Enbridge and defendant may share an interest in upholding the [pipeline] permit, Enbridge correctly points out that defendant 'does not have any particular stake in preserving Enbridge's approvals or protecting Enbridge's interests in the permit,'" Judge Kollar-Kotelly wrote.

Enbridge Energy Partners LP must comply with a few conditions, the court added, including that it "confine its arguments to the existing claims in the action," and follow the set briefing schedule in the case.

Minnesota tribes Red Lake Band of Chippewa and White Earth Band of Ojibwe, as well as Honor the Earth and the Sierra Club, **filed suit** in D.C. federal court on Christmas Eve. They argued that the Army Corps shouldn't have granted a water quality permit to Enbridge's so-called Line 3 Replacement Project without considering how petroleum transported along the pipeline could exacerbate the environmental risks of a spill.

The Dec. 24 complaint and injunction bid asked the court to halt recently started work on the project until a more thorough review and exploration of alternative options is complete.

The suit is just one of several challenges tribes and environmental groups have brought in recent months, including in **state court** and before the Minnesota Public Utilities Commission. On Dec. 4, the commission **declined** to pause work on the project.

Although Enbridge is framing the Line 3 project as a replacement effort, much of the pipeline will travel along a new route and disturb new terrain, according to the December federal complaint.

The Army Corps incorrectly found that the project will have no significant impact on the environment, the complaint alleges, a determination that led to a Clean Water Act Section 404 permit without an adequately thorough environmental impact statement.

The Line 3 project includes 338 miles of pipeline in Minnesota and less than a mile of pipeline in North Dakota, court records show. It crosses 227 bodies of water and more than 800 wetlands, as well as lands where the Red Lake and White Earth bands have hunting and fishing rights.

The Army Corps issued a series of approvals for Line 3 in November, clearing the way for work to begin. More than 1,450 workers were on the job as of Dec. 2, according to Enbridge testimony before the Minnesota Public Utilities Commission last month.

Counsel for the federal plaintiffs declined to comment Monday on Enbridge's intervention in the D.C. federal case.

In a four-paragraph written statement to Law360, Enbridge said in part that it "appreciate[s] the court granting our request to intervene in this important matter" and called the existing environmental review an "exhaustive study of the potential environmental effects of the Line 3 Replacement Project which took 16 months to complete."

"The Minnesota Public Utilities Commission and Pollution Control Agency thoroughly considered the potential effect of spills, alternatives and specific crossing methodologies," Enbridge added.

The coalition is represented by Seth L. Johnson, Moneen Nasmith, Alexis Andiman and Mekela Panditharatne of Earthjustice.

The Corps is represented by Sara E. Costello of the United States Department of Justice's Environment & Natural Resources Division.

Enbridge is represented by George P. Sibley III, Deidre Duncan and Karma B. Brown of Hunton Andrews Kurth LLP.

The suit is Red Lake Band Of Chippewa Indians et al., case number 1:20-cv-03817, in the U.S. District Court for the District of Columbia.

--Additional reporting by Morgan Conley and Diamond Naga Siu. Editing by Gemma Horowitz.

All Content © 2003-2021, Portfolio Media, Inc.