March 15, 2014

Gina McCarthy, Administrator
Environmental Protection Agency
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Enbridge Sandpiper Pipeline, Minnesota
Certificate of Need and Route
1855 Ceded Territory et al

Dear Administrator McCarthy,

I am writing to you directly because of the urgency of the eminent risks and irreparable harms that will eventually lead to the contamination of the entire Mississippi River, beginning at the initial aquifers, which have provided clean fresh water to everyone downstream since the last ice age. Our creation stories tell how the Anishinabe were given sacred gifts and directed to where the food grows on the water, which is known as wild rice. We are also known as the Chippewa of the Mississippi, who have a special relationship with the United States federal government and its agencies under many treaties.

I want to thank you and your agency as a representative of the United States, the other party to the treaties with the Chippewa, for the clear guidance given by the Environmental Protection Agency (EPA) as described in an inter-agency Memorandum dated January 8, 2013, RE: Western Washington Tribal Treaty Rights, by Deputy Administrator Bob Perciasepe. It is obvious the EPA understands the requirement of good faith, government-to-government relationships with Indian Tribes and the need to respect and protect as a matter of federal law; treaty reserved, usufructuary property rights to a safe and healthy ecosystem with clean water, from which to hunt, fish and gather and earn a modest living, in perpetuity.

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1 See “Western Washington Tribal Treaty Right” by Bob Perciasepe, US/EPA memo to Region 10 Administrator and Assistant Administrators, attached as Exhibit 1.
Honor the Earth, a nonprofit environmental organization, is focused on enhancing the resilience of Native communities and protection of the environment and rights of Native people, the waters, the lands and animals with which we live. Minnesota is the homeland of the Anishinaabe people, and maybe the single, most important fresh water resource of the western hemisphere. It is worth protecting. Minnesota needs to recognize various treaty rights, reservation tribal governments’ rights, and the 1855 Off-reservation Conservation Code, tribal members’ individual usufructuary property rights and environmental protection for the canary in the mines, wild rice.2

The majority of the proposed Sandpiper pipeline crosses the 1855 ceded territory (outlined in green on the map), however other ceded territories will also be at risk including 1854 to 1842. However, the actual route was held secret as “work product” under the Minnesota Public Utilities Commission until a public hearing in Park Rapids, Minnesota, March 12, 2014, 11-3PM.

Enbridge and the State of Minnesota in general are trying to fast track this project with the pretense of public input hearings—often held mid-day, during the winter-time with great distances to travel—attempting to give consent to risk an environment and

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ecosystem, for which we Chippewa legally possess what might be described as an essential, priority federal conservation right-of-way across the ceded territories preserved by treaties.

At the March 12th Park Rapids hearing, Mike Swan, White Earth Reservation Natural Resources Manager informed the MN PUC that Enbridge had made no effort to date to contact the Reservation with regard to the proposed Sandpiper Pipeline. Additionally, Honor the Earth attorneys informed the MN PUC that they lacked complete jurisdiction to give consent unilaterally to risk the environment because of usufructuary property and treaty rights, because federal agencies cannot delegate without Congressional actions, any of our rights to states to circumvent our federal and treaty rights. It is apparent that Minnesota wants to continue to help keep secrets about chemicals and end user clients by non-governmental parties with the recent brief letter response from the MN Dept. of Commerce, Division of Energy Resources.\(^3\)

Our treaty rights are directly put at risk by the proposed Sandpiper pipeline, and our rights as Indigenous people are at jeopardy given the catastrophic impacts to our environment that will inevitably result in a pipeline rupture again, like those in Deer River, MN, Cohasset, MN, Clearbrook, MN (and explosion) and Mayflower, Arkansas. The proposed pipeline corridor creates a new risk that our treaty lands and everything living on them will be continuously threatened because oil pipelines spill. The more remote they are, the more likely a spill will receive little attention, if any. The Enbridge Corporation is also the company which caused the largest pipeline spill in U.S. history, in Kalamazoo Michigan, with a 1.5 million gallon spill into the Kalamazoo River system, which has not yet been cleaned up.

The Reservations of White Earth, Red Lake and Leech Lake have the largest tribal member populations that still struggle with historical disadvantages that leave them disenfranchised from state hearings, which is ridiculous when the proposed project route is adjacent to one of our most culturally and traditionally significant wild rice beds in Minnesota. The EPA needs to step up, step-in, and provide federal protections and safeguards like those becoming necessary with PolyMet in the 1854 Ceded territory, another project that irreparably harms our political integrity, ecosystem and right to exist in perpetuity. Just before there was a United States, it was understood by the new humans that

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure


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these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.\textsuperscript{4}

We are not governed by Minnesota when it comes to federal rights in Indian country, and there is no apparent effort by Enbridge or Minnesota to respect our unique rights. \textit{Honor the Earth} has Intervened in the MN PUC Sandpiper process because we know tribal interests and rights are being avoided if not circumvented by a state process and big oil money, without jurisdiction and authority. We need the EPA to step in and provide for full and meaningful consultation with the tribal governments and establish realistic public hearings, with on-reservation locations, after winter is over and through wild rice harvesting season.

It is disrespectful if not unconscionable that the Anishinabe continue to be disenfranchised by a state system in a David and Goliath, poverty vs. big oil money charade. The issues raised here with regards to treaties, tribes and tribal members’ usufructuary rights are real and substantial, and we want to ensure that the EPA exercises its authorities and implements its programs to ensure thorough and complete environmental review to protect treaty-covered resources where and when required to do so with all of the required stakeholders included.

Sincerely,

Winona LaDuke

Attachments (3)

cc: Dr. Erma J. Vizenor, Chairwoman, White Earth Band
Carrie Jones, Chairwoman Leech Lake Band
Melanie Benjamin, Chief Executive, Mille Lacs Band
Karen Diver, Chairwoman, Fond du Lac Band
Kevin Leecy, Chairman, Bois Forte Band
Norman DesChampe, Chairman, Grand Portage Band
Floyd “Buck” Jourdain, Chairman, Red Lake Band

\textsuperscript{4} Declaration of Independence, July 4, 1776.