

June 9, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: State legislators urge halting construction of the Line 3 pipeline in Northern Minnesota

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 around the country, 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 through Minnesota 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 greenhouse gas emissions equal to 50 coal plants or 193 million tons of CO₂e 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 the coming months, before legal challenges are likely to conclude, effectively denying Native nations and Minnesota'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 Frank Hornstein
Minnesota

Senator Tom Begich
Alaska

Representative Brianna Titone
Colorado

Representative Kim Schofield
Georgia

Senator Chris Lee
Hawaii

Representative Roy Takumi
Hawaii

Representative Pat Boy
Indiana

Senator Laura Fine
Illinois

Senator Bill Dotzler
Iowa

Representative Art Staed
Iowa

Senator Chloe Maxmin
Maine

Delegate Lorig Charkoudian
Maryland

Senator Clarence Lam
Maryland

Delegate Lesley Lopez
Maryland

Representative Andrea Dalessandro
Arizona

Representative John Kowalko
Delaware

Senator Mike Gabbard
Hawaii

Representative Nicole Lowen
Hawaii

Representative Tina Wildberger
Hawaii

Representative Sue Errington
Indiana

Senator Joe Bolkcom
Iowa

Senator Eric Giddens
Iowa

Representative Nima Kulkarni
Kentucky

Senator Dave Miramant
Maine

Delegate David Fraser-Hidalgo
Maryland

Delegate Brooke Lierman
Maryland

Delegate Julie Palakovich Carr
Maryland

Delegate Sheila Ruth
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Senator Marc Pacheco
Massachusetts

Representative Patty Acomb
Minnesota

Representative Jamie Becker-Finn
Minnesota

Senator Scott Dibble
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Senator Omar Fateh
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Representative Aisha Gomez
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Representative Jess Hanson
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Representative Athena Hollins
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Representative Heather Keeler
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Representative Fue Lee
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Representative Jamie Long
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Representative Sandra Masin
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Representative Rena Moran
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Senator Sandra Pappas
Minnesota

Senator Patricia Torres Ray
Minnesota

Representative Denise Hayman
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Delegate Dana Stein
Maryland

Senator Stephanie Chang
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Representative Esther Agbaje
Minnesota

Representative Liz Boldon
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Senator Chris Eaton
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Representative Sandra Feist
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Representative Emma Greenman
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Representative Kaohly Her
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Representative Sydney Jordan
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Senator Mary Kunesh
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Representative Todd Lippert
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Senator John Marty
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Senator Jennifer McEwen
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Senator Erin Murphy
Minnesota

Representative Liz Reyer
Minnesota

Representative Samantha Vang
Minnesota

Representative Connie Keogh
Montana

Representative Angelica Rubio
New Mexico

Senator Bill Tallman
New Mexico

Representative Rebecca McWilliams
New Hampshire

Senator David Watters
New Hampshire

Senator Tim Mathern
North Dakota

Senator Liz Krueger
New York

Representative Stephanie Howse
Ohio

Representative Kent Smith
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Representative Marty Wilde
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Representative G.A. Hardaway, Sr.
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Representative Peter Anthony
Vermont

Representative Sara Coffey
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Representative Avram Patt
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Representative Robin Scheu
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New York

Assemblymember Jo Anne Simon
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Representative Michael Skindell
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Representative Andrea Salinas
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Representative Greg Vitali
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Representative Dwayne Thompson
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Representative Scott Campbell
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Representative Kari Dolan
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Senator Kesha Ram
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Representative Laura Sibilía
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Senator Bob Hasegawa
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Senator Liz Lovelett
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Representative Jill Billings
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Representative Gary Hebl
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