



# WHITE EARTH RESERVATION

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## TESTIMONY OF MICHAEL FAIRBANKS, TRIBAL CHAIRMAN WHITE EARTH NATION

### SUBMITTED TO THE HOUSE SUBCOMMITTEE ON INDIGENOUS PEOPLES

October 26, 2021

Chairman Leger Fernandez, Ranking Member Don Young and Members of the Committee:

On behalf of the White Earth Band of Ojibwe, I am grateful for the opportunity to share with you our concerns regarding environmental justice in Indian Country. My name is Michael Fairbanks and I am the duly elected Tribal Chairman of the White Earth Band. I want to focus my testimony today on issues surrounding the federal government's role in authorizing the recently completed Enbridge Line 3 Replacement Project through our treaty territory, as well as the importance of water protection for our people.

The White Earth Band opposed the construction of Line 3 through our treaty territory since a new route was proposed by Enbridge in 2015. The new route crossed directly through the territory we ceded in the Treaty of 1855, also known as the Treaty of Washington. The new route also directly crosses the headwaters of the Mississippi and through the watersheds our people have used from time immemorial for fishing and wild ricing.

Throughout the routing and permitting process, our pleas to state and federal regulators fell on deaf ears. The Minnesota Public Utilities Commission approved Enbridge's certificate of need and route permit despite our repeated objections, treating us like any other private party and not the co-regulator of natural resources our status as a sovereign nation demands. The Army Corps of Engineers approved Enbridge's permit application without completing its own Environmental Impact Statement; the Army Corps also did not comply with its own tribal

consultation requirements and rushed its approval of its permit through with little public input in November 2020 as the COVID-19 pandemic ravaged the nation.

Despite these setbacks, White Earth never stopped pleading with state and federal officials to cease the construction. In June 2021, the Minnesota Department of Natural Resources issued a dewatering permit amendment that allowed Enbridge to temporarily displace almost 5 billion gallons of groundwater. This amendment was issued with no meaningful tribal consultation. Even more worrisome, the amendment to displace billions of gallons of water was granted during a severe drought.

Meaningful discussions with the Army Corps finally began to take place in mid-2021, and White Earth continued to request the Army Corps temporarily suspend its permit due to both procedural irregularities – the lack of tribal consultation and public input during the initial approval, as well as substantive irregularities – significant cultural sites were located along the construction route and stop work orders ignored. However, no temporary suspension was ever granted.

The result of all our efforts is White Earth now has a crude oil pipeline pumping 760,000 barrels of tar sands oil through our homelands and the Mississippi headwaters. Now that the construction is complete, the Minnesota Department of Natural Resources has admitted that Enbridge pierced a groundwater aquifer during its construction that resulted in a loss of 2,400,000 gallons of groundwater. The Minnesota Department of Natural Resources reported that Enbridge failed to notify the Department of its violation and merely fined the multibillion dollar conglomerate \$3 million for this significant loss of ground water.

White Earth story regarding Line 3 is not unique in Indian Country. Indigenous people standing for the environment and the protection and stewardship of our natural resources are routinely ignored and sidelined. Despite the history of ignoring tribal governments, we honestly expected more from the State of Minnesota and from the Army Corps of Engineers. It is my sincere hope that we can shed line on these repeated abuses and create laws that require tribal approval of projects encroaching on tribal homelands.

Miigwech, thank you, for your time today and I am happy to answer any questions you may have.