

Enbridge Line 3 Replacement Project 401 water quality certification comments and MPCA thematic responses

The MPCA received over 10,000 comment submittals during the formal comment period for the draft 401 water quality certification. The 401 water quality certification review team for the Line 3 Replacement Pipeline Project reviewed every submittal to determine whether changes to the draft 401 water quality certification were needed. Permit and antidegradation rules do not require the agency respond to individual comments on draft 401 water quality certifications; however, the MPCA did prepare general responses to 401 comment themes compiled from individual comments received. Because a team of reviewers sorted and classified comments by theme, there may be instances where an individual disagrees with the agency-identified theme for any specific comment. The MPCA assures all commenters that, regardless of classification, each comment was read and considered. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.

Comment theme classification	Comment themes/subtopics	Response summaries
General/nonspecific – oppose	Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.	Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.
General/nonspecific - support	Comments express general support for the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining support, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.	Comment noted. Comment generally states support for the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.

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Climate change	Comments identify the significant levels of greenhouse gas emissions that may be attributed to the project in a “life cycle” analysis (primarily from non-regulated downstream users of product a pipeline conveys), and/or speak in support of a more robust transition to clean energy alternatives. Some comments connect greenhouse gas emissions and climate change to reduced water quality.	The MPCA readily acknowledges the significant impacts to Minnesota's environment and human health resulting from global climate change, and believes broad actions are needed to reduce greenhouse gas emissions - whether at local, state, federal, or international levels. However, the regulation of greenhouse gas emissions, and matters pertaining to state energy planning are outside the scope of the 401 water quality certification. No changes were made to the draft 401 water quality certification in response to these comments.
	Comments generally speak to climate adaptation and resiliency considerations, focusing on the need to consider how climate effects may worsen the water quality impacts from the proposed project’s construction activities and associated discharges.	The MPCA recognizes the threat to water quality posed by a changing climate. Minnesota has already experienced an increase in significant precipitation events with heavy storms and flash flooding. The Line 3 project, like many projects undertaking significant land-disturbing activities in Minnesota, must comply with the requirements of the Construction Stormwater general permit which addresses stormwater pollution during and after construction to protect Minnesota’s water resources. The draft 401 water quality certification adds protections for surface waters and requires compliance with an Environmental Protection Plan (EPP). The EPP identifies best management practices (BMPs) for different types of construction activities, and requires consideration of weather events in construction and restoration activities to ensure that such activities will be conducted to avoid and minimize impacts to water resources. Comments do not typically reference specific sections of the draft 401 water quality certification or request specific changes (Minn. R. 7001.0110, subp. 2). No changes have been made to the draft 401 water quality certification in response to these comments.
	Comments speak to climate adaptation and resiliency considerations, but focus more specifically on the potential for areas of exposed pipe due to climate effects (namely increased precipitation/storm events).	The draft 401 water quality certification requires compliance with an Environmental Protection Plan (EPP). The EPP specifies the pipeline depth of cover requirements (a minimum of 48 inches from substrate) for inland surface waters. This depth of cover is addressed through annual depth of cover surveys and annual flood monitoring. Reductions of depth of cover may require on-the-ground maintenance inspection and repairs, as appropriate. No changes have been made to the draft 401 water quality certification in response to these comments.

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	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large, and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>
Oil spills	<p>Comments express opposition to the project and offer critique on the scope and conditions of the draft 401 water quality certification, suggesting that they are insufficiently protective of water quality and the environment with respect to the potential for oil spills/leaks.</p> <p>Comments express opposition to the project and offer critique on the draft 401 water quality certification, due to concerns about the project's oil spill response plan.</p> <p>Comments express opposition to the project and offer critique on the scope and conditions of the draft 401 water quality certification, suggesting that they are insufficiently protective of groundwater.</p>	<p>The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for the regulation of oil pipelines in the United States. The regulations PHMSA administers cover a broad range of pipeline safety standards, from pipeline construction, to pipeline integrity management, to spill response. The project has not sought nor been granted approval to discharge any grade of crude oil or crude oil-related product—including diluted bitumen—and the draft 401 water quality certification includes a condition that prohibits any such discharge from Line 3 to waters of the state. The MPCA has reviewed Enbridge's spill response plans as required under Minn. Stat. 115E, and the draft 401 water quality certification requires notification to the agency of any safety related conditions identified through monitoring within 30 feet of surface waterbodies throughout the life of the project. The MPCA believes there is a reasonable assurance that compliance with federal and state requirements will ensure compliance with water quality standards and protection of beneficial uses. No changes were made to the draft 401 water quality certification in response to these comments.</p> <p>Minn. Stat. 115E also requires a "prevention and response plan," (Minn. Stat. 115E clarifies that this may be the same plan used to meet federal requirements) that the MPCA reviews; though the draft 401 water quality certification requires submittal of this plan for MPCA review, the review itself is conducted outside of the regulatory scope of the 401 water quality certification. The MPCA's Emergency Management Unit has reviewed Enbridge's spill response plans as required under Minn. Stat. 115E (and will review future updates to any such plans), and the comment will be passed on to that program for consideration. No changes were made to the draft 401 water quality certification in response to these comments.</p> <p>The draft 401 water quality certification requires notification to the agency of any safety related conditions identified through monitoring within 30 feet of surface waterbodies throughout the life of the project. The Operational Pipeline Monitoring Response plan incorporated into the draft 401 water quality certification outlines those actions that will be taken when a safety-related condition occurs, including visual inspection of above ground</p>

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		<p>conditions and ground probes, which can serve to identify potential leaks. The MPCA believes there is a reasonable assurance that compliance with federal and state requirements will ensure compliance with water quality standards and protection of beneficial uses. No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express opposition to the project route, due to the potential for oil spills/leaks near high quality or sensitive waters in Minnesota.</p>	<p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project. No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large, and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>
	<p>Comments question or challenge the project need/Certificate of Need, and/or claim that the review failed to comply with the requirements of the Minnesota Environmental Policy Act, citing Minn. Stat. 116D.04, subd 6, which speaks to the treatment of economic considerations for projects that may impact the environment.</p>	<p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline need decisions. The Certificate of Need issued by the PUC established the need for the project and consideration of need is not within the authority of the MPCA for the project. No changes were made to the draft 401 water quality certification in response to these comments.</p>
<p>Wetland impacts</p>	<p>Comments suggest that wetland impacts are more significant than identified in project application materials, based on part on flaws in wetland delineation methodology, and on the potential for cumulative/indirect impacts to wetlands crossed by the project. Comments generally seek denial of 401 certification, but some may also identify a need for additional avoidance, minimization, and mitigation, due to the perceived wetland impact footprint. Many comments identified concerns consistent with the issues addressed during the contested case hearing granted by the MPCA. These include: whether Enbridge and the MPCA undercounted the full acreage of the Project's wetland impacts due to flaws in wetland delineation and survey</p>	<p>Field surveys for all wetlands within the project route are complete. The matter of seasonality of wetland delineations was addressed during the contested case hearing for the project. Wetland delineations were conducted in accordance with U.S. Army Corps of Engineers (USACE) methodologies, and have been "spot checked" in the field by USACE, MPCA, and DNR. Potentially impacted wetlands have been appropriately identified and characterized.</p> <p>Assessments of potentially impacted wetland acreages for the project focus on those wetlands that will be "physically altered," in accordance with Minn. R. 7050.0186, which requires mitigation for lost or diminished uses of a wetland that has been physically altered. The same rule part defines "physical alteration" as the dredging, filling, draining, or permanent inundating of a wetland. The basis for determining the acreage of physical</p>

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	<p>methodologies related to the seasonality of delineation activities; whether Enbridge and the MPCA undercounted the full acreage of wetlands that are physically altered by trenching; and whether Enbridge and the MPCA incorrectly determined that the impacts to wetlands that are physically altered by trenching are temporary?</p>	<p>alteration involved calculation using GIS digital queries as the number of acres of delineated wetlands within the project's construction workspace, access roads, additional temporary workspace, and permanently filled areas. The MPCA verified these calculations in its 401 water quality certification review process.</p> <p>The MPCA acknowledges that project construction has the potential to cause additional "indirect" or "shadow" impacts to wetlands not currently assessed for mitigation in the project proposal or draft 401 water quality certification. The MPCA and other regulators have worked with the applicant to develop a Post-Construction Wetland and Waterbody Monitoring Plan (PCMP), which will help to determine if additional impacts to Minnesota's aquatic resources have occurred as a result of the project's construction. Changes in hydrology that lead to a draining or permanent inundation would be identified through the PCMP. If such additional impacts manifest, the applicant is required to conduct remedial action to restore waters to preconstruction status. If unable to do so and a loss of existing uses occurs, additional compensatory mitigation will be required.</p> <p>The Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge James E. LaFave prepared in response to the contested case hearing conducted, in part, on these issues, support the MPCA's analysis and findings on these matters. No changes have been made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments speak to the important role that wetlands play with respect to climate adaptation and the protection of water quality, and suggest that the project's wetland impacts should be avoided.</p>	<p>The MPCA recognizes the threat to water quality posed by a changing climate. Minnesota has already experienced an increase in significant precipitation events with heavy storms and flash flooding. The Line 3 project, like many projects undertaking significant land-disturbing activities in Minnesota, must comply with the requirements of the Construction Stormwater general permit which addresses stormwater pollution during and after construction to protect Minnesota's water resources. The draft 401 water quality certification adds protections for surface waters, and requires compliance with an Environmental Protection Plan (EPP). The EPP identifies best management practices (BMPs) for different types of construction activities, and requires consideration of weather events in construction and restoration activities to ensure that such activities will be conducted to avoid and minimize impacts to water resources. The MPCA and other regulators have worked with the applicant to develop a Post-Construction Wetland and Waterbody Monitoring Plan (PCMP), which will help to determine if additional impacts to Minnesota's aquatic resources have occurred as a result of the project's construction. Changes in hydrology that lead to a draining or permanent inundation would be identified through the PCMP. If such additional impacts manifest, the applicant is required to conduct remedial action to restore waters to preconstruction status. If unable to do so and a loss of existing uses occurs, additional</p>

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		<p>compensatory mitigation will be required. The MPCA believes that the project will comply with applicable water quality requirements and will ensure protection of existing and designated uses.</p> <p>Comments generally do not reference specific sections of the draft 401 water quality certification or request specific changes (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express opposition to the project route, due to the significant number of wetlands crossed by the proposed pipeline.</p>	<p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project. No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express opposition to the project's potential wetland impacts due to the potential to impact wild rice.</p>	<p>The draft 401 water quality certification includes specific protections for wild rice waters such as seasonal restrictions on construction activities in or within 25 miles upstream of a wild rice water, and limitations on horizontal directional drilling mud additives to ensure that sulfate-containing additives are not authorized for use in Minnesota waters. Additionally, wetland mitigation is required at a higher ratio for proposed physical alterations to wetlands that are adjacent to wild rice waters. The MPCA believes that the draft 401 water quality certification is protective of wild rice.</p>
	<p>Comments express opposition to the project's potential wetland impacts on the basis of tribal or environmental justice concerns generally.</p>	<p>The MPCA identified the potential for disproportionate environmental impacts from various alternatives and provided such information to the docket during the preparation of the project's Environmental Impact Statement and consideration of the project's route permit. With the route having been selected and finalized through the route permit issuance, the MPCA's project review for the 401 water quality certification is now limited to water quality regulatory requirements. The MPCA's draft 401 water quality certification is protective of water quality and is not expected to result in a violation of water quality standards or loss of beneficial use for any waterbody.</p>
	<p>Comments express opposition to the project's potential wetland impacts on the basis of tribal water rights and/or because the project crosses tribal treaty lands/ceded territories.</p>	<p>The MPCA and Minnesota Tribal Nations have a common interest and desire to protect the quality of waters in Minnesota. As stated in Governor Tim Walz' Executive Order 19-24, the State of Minnesota recognizes and supports the unique status of the Minnesota Tribal Nations and their right to existence, self-govern, and possess self-determination. As related to the Line 3 project, the MPCA has delegated authority under the CWA Section 401 to issue certifications protective of water quality for waters of the state. Comments allege that the Clean Water Act does not apply to Indian tribes, and raise the question of whether Congress exempted water rights from the 1953 jurisdictional grant under Public Law 280 to all states, including Minnesota, and, if so, whether the 401 Certification violates the water rights of</p>

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	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Chippewa Tribes. These comments raise questions related to the application of federal law to Indian tribes and questions related to treaty law. The resolution of these questions are beyond the scope of this response and are appropriately resolved in a judicial forum.</p> <p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large, and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>
	<p>Comments suggest that wetland mitigation requirements are inadequate to ensure the replacement of lost or diminished existing uses, due to the important role that wetlands play in ecosystem health and water quality.</p>	<p>The MPCA recognizes and values the important role wetlands play in ecosystem health and water quality. For this reason, the MPCA required an updated mitigation package for proposed wetland impacts early on in the project review. The agency worked closely with the Minnesota Department of Natural Resources and U.S. Army Corps of Engineers to identify appropriate mitigation ratios for the project that reflected both the nature of proposed impacts (temporary, conversions of wetland type, and permanent fill impacts) as well as the nature of the wetlands proposed for impact. The majority of wetlands proposed for impact are expected to be temporarily impacted, and restored to pre-construction conditions upon conclusion of construction activities. Though these temporary impacts require up-front mitigation, they are also required to be restored and to meet performance standards identified in a post construction monitoring plan. If post construction monitoring indicates that these temporarily impacted areas are not meeting the performance standards, additional restoration activities and mitigation would be required. The MPCA is confident that the draft 401 water quality certification ensures compliance with the mitigation requirements of Minn. R. 7050.0186 and 7050.0265.</p>
<p>Water quality impacts</p>	<p>A number of commenters raised issues consistent with those addressed in the contested case hearing that the MPCA granted. Comments questioned whether the proposed use of trenched crossing methods resulted in temporary or permanent impacts to water quality parameters of concern (particularly total suspended solids resulting from project construction or from indirect effects after project construction including streambank stabilization, removal of riparian vegetation, or climate resiliency impacts), whether biological water quality standards should have been incorporated into the project review, and whether</p>	<p>The MPCA acknowledges that project construction activities would be expected to result in acute, temporary spikes in total suspended solids (TSS), largely confined to the duration of the trenching activity itself. As discussed in the contested case hearing proceedings, the water quality standard for TSS has a time component - they may be exceeded up to 10 percent of the time between April 1 and September 30. The duration of TSS increases from trenching are expected to last only a matter of hours or days, while a violation of the TSS standard would require exceedances over a period of at least 18 days. The MPCA has determined that the project's construction activities are not expected to violate water quality standards or result in a loss of existing or designated beneficial uses.</p>

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	<p>the least degrading prudent and feasible crossing methods have been selected for each stream crossing.</p>	<p>The “biological water quality standards” raised in comments, established in the MPCA’s Tiered Aquatic Life Use rulemaking, were intended to improve the MPCA’s framework for assessing the biological health of streams. The rule was not intended to alter the regulatory framework that applies to General Use streams or change the permitting standard of review for such streams. All of the streams that the Line 3 Project crosses are “General Use” streams. As a result, the MPCA “appropriately focused on the parameters of concerns associated with the project to ensure compliance with the Class 2 water quality standards.</p> <p>With respect to crossing method selection, the MPCA reviewed all proposed and alternative stream crossing methods with care and sound judgment, compiling a team of subject matter experts including hydrogeologists, research scientists, and water quality specialists. The MPCA also coordinated its review with the U.S. Army Corps of Engineers and Minnesota Department of Natural Resources, who have overlapping jurisdiction over stream crossings. The Antidegradation Assessment and associated attachments describe factors considered in the selection of stream crossing methodology, and the MPCA’s administrative record further describes the agency’s review of these methods. The MPCA’s review has fully complied with applicable water quality regulations.</p> <p>The Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge James E. LaFave prepared in response to the contested case hearing conducted, in part, on these issues, support the MPCA’s analysis and findings on the matters.</p> <p>No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Commenters identified potential water quality impacts associated with potential oil spills/leaks, and typically requested denial of the 401 water quality certification.</p>	<p>The U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for the regulation of oil pipelines in the United States. The regulations PHMSA administers cover a broad range of pipeline safety standards, from pipeline construction, to pipeline integrity management, to spill response. The project has not sought nor been granted approval to discharge any grade of crude oil or crude oil-related product—including diluted bitumen—and the draft 401 water quality certification includes a condition that prohibits any such discharge from Line 3 to waters of the state. The MPCA has reviewed Enbridge’s spill response plans as required under Minn. Stat. 115E, and the draft 401 water quality certification requires notification to the agency of any safety related conditions identified through monitoring within 30 feet of surface waterbodies throughout the life of the project. The MPCA believes there is a reasonable assurance that compliance with federal and state requirements will ensure compliance with water quality standards and</p>

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		protection of beneficial uses. No changes were made to the draft 401 water quality certification in response to these comments.
	Comments express opposition to the project route, due to the significant number of waterbodies (including high quality streams, and one outstanding resource value water) crossed by the proposed pipeline.	The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project. No changes were made to the draft 401 water quality certification in response to these comments.
	Comments express opposition to the project's potential impacts to wild rice resulting from the number of waterbody crossings proposed, including waterbodies that are themselves wild rice waters or are upstream from wild rice waters.	The draft 401 water quality certification includes specific protections for wild rice waters such as seasonal restrictions on construction activities in or within 25 miles upstream of a wild rice water, and limitations on horizontal directional drilling mud additives to ensure that sulfate-containing additives are not authorized for use in Minnesota waters. Additionally, wetland mitigation is required at a higher ratio for proposed physical alterations to wetlands that are adjacent to wild rice waters. The MPCA believes that the draft 401 water quality certification is protective of wild rice.
	Comments express opposition to the project's potential water quality impacts on the basis of tribal or environmental justice concerns generally.	The MPCA identified the potential for disproportionate environmental impacts from various alternatives and provided such information to the docket during the preparation of the project's Environmental Impact Statement and consideration of the project's route permit. With the route having been selected and finalized through the route permit issuance, the MPCA's project review for the 401 water quality certification is now limited to water quality regulatory requirements. The MPCA's draft 401 water quality certification is protective of water quality and is not expected to result in a violation of water quality standards or loss of beneficial use for any waterbody.
	Comments express opposition to the project's potential water quality impacts on the basis of tribal water rights and/or because the project crosses tribal treaty lands/ceded territories.	The MPCA and Minnesota Tribal Nations have a common interest and desire to protect the quality of waters in Minnesota. As stated in Governor Tim Walz' Executive Order 19-24, the State of Minnesota recognizes and supports the unique status of the Minnesota Tribal Nations and their right to existence, self-govern, and possess self-determination. As related to the Line 3 project, the MPCA has delegated authority under the CWA Section 401 to issue certifications protective of water quality for waters of the state. Comments allege that the Clean Water Act does not apply to Indian tribes, and raise the question of whether Congress exempted water rights from the 1953 jurisdictional grant under Public Law 280 to all states, including Minnesota, and, if so, whether the 401 Certification violates the water rights of Chippewa Tribes. These comments raise questions related to the application of federal law to Indian tribes and questions related to treaty law. The resolution of these questions are beyond the scope of this response and are appropriately resolved in a judicial forum.

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	<p>Comments object to the antidegradation analysis, asserting that project's social and economic benefits do not exceed the potential water quality degradation associated with the project.</p>	<p>The MPCA's project review followed the requirements of its antidegradation water quality standards (Minn. R. 7050.0265 and 7050.0285). Because the MPCA has found the water quality impacts associated with the project are primarily of short duration and not expected to result in a loss of existing or designated beneficial uses, potential economic losses attributable to the degradation of water quality in the geographic area of the proposed activity (Minn. R. 7050.0265, subp 5.B.) are likewise expected to be limited and of short duration. No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments suggested that the MPCA's scope of review for 401 water quality certification was too narrow, and should have accounted for consideration of project operations and lifecycle greenhouse gas emissions associated with the project because of the potential for water quality impacts associated with climate change and oil spill risks.</p>	<p>On September 11, 2020, the EPA's "Clean Water Act Section 401 Certification Rule," went into effect (final rule published in the Federal Register on July 13, 2020, 85 FR 42210). This rule action narrowed the scope of 401 water quality certification review considerably, limiting such review (and any associated certification decisions or conditions) to assuring that a discharge from a federally licensed or permitted activity will comply with "water quality requirements" (defined as "applicable provisions of §301, 302, 303, 306, 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States." Certification decisions that exceed this narrowly defined scope can be determined by the federal permitting agency as an effective waiver of certification authority. The rule also provides federal permitting authorities the ability to effectively "waive" individual conditions in any issued certifications that are outside the scope of the EPA's rule. Though the request for 401 water quality certification was submitted prior to the effective date of the EPA's rule, a final decision would occur after the rule is in effect. Neither the rule, nor the rule preamble, address the scope of review for such projects, and while an EPA "FAQ" document suggests that such projects may be reviewed under the laws in effect at the time the request was submitted, EPA guidance issued Jun 7, 2019, indicates that EPA's interpretation of law at that time supported a similarly narrow review of scope. The MPCA did provide comment to the EPA on both the development of guidance as well as the rule proposal, supporting a more expansive scope of review consistent with earlier guidance and court decisions, however, with the final rule in effect, the MPCA is proceeding accordingly. No changes have been made to the draft 401 water quality certification in response to these comments.</p>
	<p>One commenter recommended that stream mitigation cost per linear foot amount (\$400) be increased based on an estimated valuation per linear foot of lakeshore at the water's edge where that stream outlet empties.</p>	<p>The cost per linear foot amount included in the draft 401 water quality certification was based on input from the Minnesota Department of Natural Resources regarding a typical/average cost per linear foot of stream restoration projects in Minnesota. This approach is most consistent with water quality requirements, which specify that mitigation for physical alterations to surface waters must consist of restoration or enhancement of waterbodies of the same type as impacted. No changes have been made to the draft 401 water quality certification in response to this comment.</p>

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	<p>One commenter recommends that drone technology be used during HDD stream crossings to identify the potential for inadvertent releases.</p>	<p>The MPCA has required a sufficient number of independent environmental monitors be onsite throughout project construction activities, and has identified HDD crossings as a high priority for monitors. Though drone technology offers many opportunities for enhanced monitoring, the potential for delayed viewing of footage, or technical difficulties lead to a preference for live, on-site independent inspectors observing the drilling activities. No changes have been made to the draft 401 water quality certification in response to this comment.</p>
	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>
Route alternatives	<p>Comments are generally critical of the project route whether because of construction impacts to aquatic resources, or because of the potential for operational impacts (oil spills) to aquatic resources. Comments may seek project denial or may request the MPCA seek changes to the project route.</p>	<p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project. Because the PUC issued a route permit for the project, only that specific route could be considered "feasible" in the context of the MPCA's antidegradation rules. No other route alternatives had "supportive governance that could be successfully put into practice to accomplish the task" (Minn. R. 7050.0255, subp 17). No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express opposition to the project route on the basis of tribal or environmental justice concerns.</p>	<p>The MPCA identified the potential for disproportionate environmental impacts from various alternatives and provided such information to the docket during the preparation of the project's Environmental Impact Statement and consideration of the project's route permit. With the route having been selected and finalized through the route permit issuance, the MPCA's project review for the 401 water quality certification is limited to water quality regulatory requirements. The MPCA's draft 401 water quality certification is protective of water quality and is not expected to result in a violation of water quality standards or loss of beneficial use for any waterbody.</p>
	<p>Comments express opposition to the project route on the basis of potential impacts to wild rice.</p>	<p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project. Because the PUC issued a route permit for the project, only that specific route could be considered "feasible" in the context of the MPCA's antidegradation rules. No other route alternatives had "supportive governance that could be successfully put into practice to</p>

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	<p>Commenters suggest that the MPCA’s review of the project route failed to comply with the requirements of the Minnesota Environmental Policy Act, citing Minn. Stat. 116D.04, subd 6, which requires that a state action/permit shall not be granted so long as there is a feasible and prudent alternative.</p>	<p>accomplish the task" (Minn. R. 7050.0255, subp 17). No changes were made to the draft 401 water quality certification in response to these comments.</p> <p>The MPCA's project review followed the requirements of its antidegradation water quality standards (Minn. R. 7050.0265 and 7050.0285). The language of MEPA is consistent with the language of the MPCA's antidegradation rules, identifying that a state action authorizing pollution/impairment may not be granted so long as there is a feasible and prudent alternative. MEPA and its associated regulations do not, however, define "feasible and prudent." The MPCA therefore looks to its antidegradation rules for such definitions: "Prudent" and "feasible" are defined in Minn. R. 7050.0255, where a "prudent alternative" is a "pollution control alternative selected with care and sound judgment," and a "feasible alternative" is one that "is consistent with sound engineering and environmental practices, affordable, and legal and that has supportive governance that can be successfully put into practice to accomplish the task." The MPCA has conducted its review of the project accordingly, in compliance with all applicable regulations.</p> <p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project. Because the PUC issued a route permit for the project, only that specific route could be considered "feasible" in the context of the MPCA's antidegradation rules. No other route alternatives had "supportive governance that could be successfully put into practice to accomplish the task" (Minn. R. 7050.0255, subp 17). No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>
<p>Process/public engagement</p>	<p>Comments request modification of MPCA’s planned public notice/engagement processes, including cancelation of original in-person public meetings due to the COVID pandemic, extension of public comment period and rescheduling in-person public meetings (scheduled when safe to do so in light of COVID community mitigation practices).</p>	<p>The MPCA recognizes the extreme difficulty posed by the COVID-19 pandemic and adjusted the form of meetings to allow meaningful public engagement in accordance with Minnesota Department of Health-recommended community mitigation practices. The MPCA provided a 39-day public comment period (extended from 32 days upon the rescheduling of public meeting opportunities), from March 2, 2020, to April 10, 2020, and hosted three telephone town halls for the project, on April 2, 7, and 9, 2020. The MPCA received input from over</p>

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		10,000 individuals regarding the draft 401 water quality certification through this modified public process. No changes were made to the draft 401 water quality certification in response to these comments.
	Comments questioned the MPCA's review process, suggesting that the MPCA did not sufficiently consult with interested stakeholders.	The MPCA conducted its project review in accordance with all applicable regulations. The MPCA worked to provide enhanced opportunities for engagement, beyond those required by rule, holding multiple meetings with interested stakeholders upon request (both before and after the formal public notice and comment period), and making project materials (including the full project administrative record) easily available on its website. The MPCA appreciates that there are always opportunities to improve its public engagement processes, and welcomes input on those processes. No changes have been made to the draft 401 water quality certification in response to these comments.
	Comments claimed that the telephone town halls provided uneven access to project proponents.	The MPCA conducted three "telephone town halls" to replace the three in-person public meetings originally scheduled (and canceled due to the COVID-19 pandemic) during the public comment period for the draft permits and 401 water quality certification. The MPCA posted time, date, and call-in information for the town halls on its project website and sent notice through its GovDelivery system. The MPCA did not provide additional information or instruction on the telephone town hall system to any project stakeholders. No changes have been made to the draft 401 water quality certification in response to these comments.
	Comments suggested that the MPCA's scope of review for 401 water quality certification was too narrow, and should have accounted for consideration of project operations and lifecycle greenhouse gas emissions associated with the project.	On September 11, 2020, the EPA's "Clean Water Act Section 401 Certification Rule," went into effect (final rule published in the Federal Register on July 13, 2020, 85 FR 42210). This rule action narrowed the scope of 401 water quality certification review considerably, limiting such review (and any associated certification decisions or conditions) to assuring that a discharge from a federally licensed or permitted activity will comply with "water quality requirements" (defined as "applicable provisions of §301, 302, 303, 306, 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States." Certification decisions that exceed this narrowly defined scope can be determined by the federal permitting agency as an effective waiver of certification authority. The rule also provides federal permitting authorities the ability to effectively "waive" individual conditions in any issued certifications that are outside the scope of the EPA's rule. Though the request for 401 water quality certification was submitted prior to the effective date of the EPA's rule, a final decision would occur after the rule is in effect. Neither the rule, nor the rule preamble, address the scope of review for such projects, and while an EPA "FAQ" document suggests that such projects may be reviewed under the laws in effect at the time the request was submitted, EPA guidance issued Jun 7, 2019, indicates that EPA's interpretation of law at that time supported a similarly narrow review of scope. The MPCA did provide comment to the EPA on both the development of guidance as well as the rule

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	<p>Commenters suggest that the MPCA's review failed to comply with the requirements of the Minnesota Environmental Policy Act, citing Minn. Stat. 116D.04, subd 6, which speaks to the treatment of economic considerations for projects that may impact the environment.</p>	<p>proposal, supporting a more expansive scope of review consistent with earlier guidance and court decisions, however, with the final rule in effect, the MPCA is proceeding accordingly. No changes have been made to the draft 401 water quality certification in response to these comments.</p> <p>Comments typically cite Minn. Stat. 116D.04, subd 6, which addresses the treatment of economic considerations for projects that may impact the environment and prohibitions on state actions. The MPCA's project review followed the requirements of its antidegradation water quality standards (Minn. R. 7050.0265 and 7050.0285). The language of MEPA is consistent with the language of the MPCA's antidegradation rules, identifying that a state action authorizing pollution/impairment may not be granted so long as there is a feasible and prudent alternative. MEPA and its associated regulations do not, however, define "feasible and prudent." The MPCA therefore looks to its antidegradation rules for such definitions: "Prudent" and "feasible" are defined in Minn. R. 7050.0255, where a "prudent alternative" is a "pollution control alternative selected with care and sound judgment," and a "feasible alternative" is one that "is consistent with sound engineering and environmental practices, affordable, and legal and that has supportive governance that can be successfully put into practice to accomplish the task." The MPCA has conducted its review of the project accordingly, in compliance with all applicable regulations.</p> <p>Some comments also addressed project need, and expressed disagreement that need for the project had been adequately established under MEPA. However, the Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline need decisions. The Certificate of Need issued by the PUC established the need for the project and consideration of need is not within the authority of the MPCA for the project.</p> <p>No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>

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Indigenous/tribal concern	Comments express opposition to the project on the basis of tribal or environmental justice concerns generally.	The MPCA identified the potential for disproportionate environmental impacts from various alternatives and provided such information to the docket during the preparation of the project's Environmental Impact Statement and consideration of the project's route permit. With the route having been selected and finalized through the route permit issuance, the MPCA's project review for the 401 water quality certification is limited to water quality regulatory requirements. The MPCA's draft 401 water quality certification is protective of water quality and is not expected to result in a violation of water quality standards or loss of beneficial use for any waterbody.
	Comments express opposition to the project on the basis of tribal water rights and/or because the project crosses tribal treaty lands/ceded territories.	The MPCA and Minnesota Tribal Nations have a common interest and desire to protect the quality of waters in Minnesota. As stated in Governor Tim Walz' Executive Order 19-24, the State of Minnesota recognizes and supports the unique status of the Minnesota Tribal Nations and their right to existence, self-govern, and possess self-determination. As related to the Line 3 project, the MPCA has delegated authority under the CWA Section 401 to issue certifications protective of water quality for waters of the state. Comments allege that the Clean Water Act does not apply to Indian tribes, and raise the question of whether Congress exempted water rights from the 1953 jurisdictional grant under Public Law 280 to all states, including Minnesota, and, if so, whether the 401 Certification violates the water rights of Chippewa Tribes. These comments raise questions related to the application of federal law to Indian tribes and questions related to treaty law. The resolution of these questions are beyond the scope of this response and are appropriately resolved in a judicial forum.
	Comments express concern about protection of wild rice from project impacts, based on the plant's spiritual, cultural, biological, and economic importance to indigenous Minnesotans.	The draft 401 water quality certification includes specific protections for wild rice waters such as seasonal restrictions on construction activities in or within 25 miles upstream of a wild rice water, and limitations on horizontal directional drilling mud additives to ensure that sulfate-containing additives are not authorized for use in Minnesota waters. Additionally, wetland mitigation is required at a higher ratio for proposed physical alterations to wetlands that are adjacent to wild rice waters. The MPCA believes that the draft 401 water quality certification is protective of wild rice and will ensure the protection of this important beneficial use.
Economics	Comments question or challenge the project need/Certificate of Need, and/or claim that the review failed to comply with the requirements of the Minnesota Environmental Policy Act, citing Minn. Stat. 116D.04, subd 6, which speaks to the treatment of economic considerations for projects that may impact the environment.	The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline need decisions. The Certificate of Need issued by the PUC established the need for the project and consideration of need is not within the authority of the MPCA for the project. No changes were made to the draft 401 water quality certification in response to these comments.
	Comments question or critique the economic considerations of the MPCA's antidegradation analysis, and often request a	The MPCA's project review followed the requirements of its antidegradation water quality standards (Minn. R. 7050.0265 and 7050.0285). Comments often request a quantified

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	<p>cost/benefit analysis that factors in climate damage/social cost of carbon or a detailed energy demand forecast. CO</p> <p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>cost/benefit analysis that considers social cost of carbon estimates, or seek a detailed energy demand/consumption forecast, which are not regulatory requirements of the antidegradation review, which requires a finding that degradation is necessary to "accommodate important economic or social changes in the geographic area in which degradation of existing high water quality is anticipated." No changes were made to the draft 401 water quality certification in response to the comment.</p> <p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>
Stray voltage	<p>Comments identify concerns regarding corrosion of pipelines due to "stray voltage" issues from being co-located in utility corridors.</p>	<p>Comments raise concerns regarding stray voltage associated with collocation of powerlines and pipelines. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for the regulation of oil pipelines in the United States. The regulations PHMSA administers cover a broad range of pipeline safety standards, including alternating current-related corrosion threats. The MPCA understands that the project meets current standards and mitigation requirements for AC interference, developed by NACE International, an international authority on corrosion control. No changes were made to the draft 401 certification in response to these comments.</p>
Aquatic life impacts	<p>A number of commenters raised issues consistent with those addressed in the contested case hearing that the MPCA granted. Comments questioned whether the proposed use of trenched crossing methods resulted in temporary or permanent impacts to water quality parameters of concern (particularly total suspended solids resulting from project construction or from indirect effects after project construction including streambank stabilization, removal of riparian vegetation, or climate resiliency impacts), whether biological water quality standards should have been incorporated into the project review, and whether the least degrading prudent and feasible crossing methods have been selected for each stream crossing.</p>	<p>The MPCA acknowledges that project construction activities would be expected to result in acute, temporary spikes in total suspended solids (TSS), largely confined to the duration of the trenching activity itself. As discussed in the contested case hearing proceedings, the water quality standard for TSS has a time component - they may be exceeded up to 10 percent of the time between April 1 and September 30. The duration of TSS increases from trenching are expected to last only a matter of hours or days, while a violation of the TSS standard would require exceedances over a period of at least 18 days. The MPCA has determined that the project's construction activities are not expected to violate water quality standards or result in a loss of existing or designated beneficial uses.</p> <p>The "biological water quality standards" raised in comments, established in the MPCA's Tiered Aquatic Life Use rulemaking, were intended to improve the MPCA's framework for assessing the biological health of streams. The rule was not intended to alter the regulatory framework that applies to General Use streams or change the permitting standard of review</p>

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		<p>for such streams. All of the streams that the Line 3 Project crosses are “General Use” streams. As a result, the MPCA “appropriately focused on the parameters of concerns associated with the project to ensure compliance with the Class 2 water quality standards.</p> <p>With respect to crossing method selection, the MPCA reviewed all proposed and alternative stream crossing methods with care and sound judgment, compiling a team of subject matter experts including hydrogeologists, research scientists, and water quality specialists. The MPCA also coordinated its review with the U.S. Army Corps of Engineers and Minnesota Department of Natural Resources, who have overlapping jurisdiction over stream crossings. The Antidegradation Assessment and associated attachments describe factors considered in the selection of stream crossing methodology, and the MPCA's administrative record further describes the agency's review of these methods. The MPCA's review has fully complied with applicable water quality regulations.</p> <p>The Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge James E. LaFave prepared in response to the contested case hearing conducted, in part, on these issues, support the MPCA's analysis and findings on the matters.</p> <p>No changes were made to the draft 401 water quality certification in response to these comments.</p>
Hydrology	<p>Comments question or challenge the project need/Certificate of Need, and/or claim that the review failed to comply with the requirements of the Minnesota Environmental Policy Act, citing Minn. Stat. 116D.04, subd 6, which speaks to the treatment of economic considerations for projects that may impact the environment.</p> <p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p> <p>A number of commenters raised issues consistent with those addressed in the contested case hearing that the MPCA granted.</p>	<p>The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline need decisions. The Certificate of Need issued by the PUC established the need for the project and consideration of need is not within the authority of the MPCA for the project.</p> <p>No changes were made to the draft 401 water quality certification in response to these comments.</p> <p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p> <p>The MPCA acknowledges that project construction activities would be expected to result in acute, temporary spikes in total suspended solids (TSS), largely confined to the duration of</p>

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	<p>Comments questioned whether the proposed use of trenched crossing methods resulted in temporary or permanent impacts to water quality parameters of concern (particularly total suspended solids resulting from project construction or from indirect effects after project construction including streambank stabilization, removal of riparian vegetation, or climate resiliency impacts), whether biological water quality standards should have been incorporated into the project review, and whether the least degrading prudent and feasible crossing methods have been selected for each stream crossing.</p>	<p>the trenching activity itself. As discussed in the contested case hearing proceedings, the water quality standard for TSS has a time component - they may be exceeded up to 10 percent of the time between April 1 and September 30. The duration of TSS increases from trenching are expected to last only a matter of hours or days, while a violation of the TSS standard would require exceedances over a period of at least 18 days. The MPCA has determined that the project's construction activities are not expected to violate water quality standards or result in a loss of existing or designated beneficial uses.</p> <p>The “biological water quality standards” raised in comments, established in the MPCA’s Tiered Aquatic Life Use rulemaking, were intended to improve the MPCA’s framework for assessing the biological health of streams. The rule was not intended to alter the regulatory framework that applies to General Use streams or change the permitting standard of review for such streams. All of the streams that the Line 3 Project crosses are “General Use” streams. As a result, the MPCA “appropriately focused on the parameters of concerns associated with the project to ensure compliance with the Class 2 water quality standards.</p> <p>With respect to crossing method selection, the MPCA reviewed all proposed and alternative stream crossing methods with care and sound judgment, compiling a team of subject matter experts including hydrogeologists, research scientists, and water quality specialists. The MPCA also coordinated its review with the U.S. Army Corps of Engineers and Minnesota Department of Natural Resources, who have overlapping jurisdiction over stream crossings. The Antidegradation Assessment and associated attachments describe factors considered in the selection of stream crossing methodology, and the MPCA's administrative record further describes the agency's review of these methods. The MPCA's review has fully complied with applicable water quality regulations.</p> <p>The Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge James E. LaFave prepared in response to the contested case hearing conducted, in part, on these issues, support the MPCA's analysis and findings on the matters.</p> <p>No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments raise the question of potential risks to drinking water supplies downstream of the project.</p>	<p>The antidegradation assessment and preliminary determination for the project did consider relevant parameters of concern for Class 1 waters (waters whose designated beneficial use includes domestic consumption). No changes were made to the draft 401 water quality certification in response to this comment.</p>

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	Comments raise concerns regarding stream bed and bank changes in morphology and elevation, and suggest the potential for hydrological changes resulting from project construction.	The draft 401 water quality certification requires compliance with an Environmental Protection Plan (EPP) which describes restoration required for temporarily impacted waterbody beds and banks. Additionally, the draft 401 water quality certification requires compliance with a post construction monitoring plan that specifies the required monitoring and additional restoration activities needed to ensure that temporarily impacted waterbodies are returned to preconstruction conditions. The comment does not reference specific sections of the draft 401 water quality certification or request specific changes (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to this comment.
	Comments raise concerns of thermal warming in coldwater stream habitats.	The draft 401 water quality certification requires compliance with an Environmental Protection Plan (EPP). The EPP specifies the pipeline depth of cover requirements (a minimum of 48 inches from substrate) for inland surface waters. A number of trout streams are crossed through the HDD method, in which the pipe depth is far greater than 48 inches from substrate. The depth of cover helps to mitigate against thermal changes in surface waters crossed. This depth of cover is addressed through annual depth of cover surveys and annual flood monitoring. Reductions of depth of cover may require on-the ground maintenance inspection and repairs, as appropriate. No changes have been made to the draft 401 water quality certification in response to these comments.
	Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.	Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.
Wild rice	Comments express concern about protection of wild rice from project impacts, based on the plant's spiritual, cultural, biological, and economic importance to indigenous Minnesotans.	The draft 401 water quality certification includes specific protections for wild rice waters such as seasonal restrictions on construction activities in or within 25 miles upstream of a wild rice water, and limitations on horizontal directional drilling mud additives to ensure that sulfate-containing additives are not authorized for use in Minnesota waters. Additionally, wetland mitigation is required at a higher ratio for proposed physical alterations to wetlands that are adjacent to wild rice waters. The MPCA believes that the draft 401 water quality certification is protective of wild rice and will ensure the protection of this important beneficial use.
	Comments express opposition to the project route on the basis of potential impacts to wild rice.	The Minnesota Public Utilities Commission is the Minnesota unit of government with decision authority over oil and gas pipeline routing decisions. The route permit issued by the PUC determined pipeline route and is not within the authority of the MPCA for the project.

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		<p>Because the PUC issued a route permit for the project, only that specific route could be considered "feasible" in the context of the MPCA's antidegradation rules. No other route alternatives had "supportive governance that could be successfully put into practice to accomplish the task" (Minn. R. 7050.0255, subp 17). No changes were made to the draft 401 water quality certification in response to these comments.</p>
	<p>Comments express opposition to the project on the basis of tribal water rights and/or because the project crosses tribal treaty lands/ceded territories that are used by tribal members for wild ricing.</p>	<p>The MPCA and Minnesota Tribal Nations have a common interest and desire to protect the quality of waters in Minnesota. As stated in Governor Tim Walz' Executive Order 19-24, the State of Minnesota recognizes and supports the unique status of the Minnesota Tribal Nations and their right to existence, self-govern, and possess self-determination. As related to the Line 3 project, the MPCA has delegated authority under the CWA Section 401 to issue certifications protective of water quality for waters of the state. Comments allege that the Clean Water Act does not apply to Indian tribes, and raise the question of whether Congress exempted water rights from the 1953 jurisdictional grant under Public Law 280 to all states, including Minnesota, and, if so, whether the 401 Certification violates the water rights of Chippewa Tribes. These comments raise questions related to the application of federal law to Indian tribes and questions related to treaty law. The resolution of these questions are beyond the scope of this response and are appropriately resolved in a judicial forum.</p>
	<p>Comments express general opposition to the project at large. Comments may be brief, or may be somewhat extensive, but often involve opinions of the project, general information explaining opposition, background information on commenter, etc. Comments typically do not reference specific sections of the draft 401 water quality certification or identify specific changes sought.</p>	<p>Comment noted. Comment states opposition to the draft 401 water quality certification or project at large and does not reference specific sections of the draft 401 water quality certification (Minn. R. 7001.0110, subp. 2). No changes were made to the draft 401 water quality certification in response to these comments. The MPCA acknowledges and thanks all commenters who participated in the review of this project during the public notice comment period.</p>