

LINE 3: THE VIOLENT REPRESSION OF INDIGENOUS-LED RESISTANCE TO CLIMATE-DAMAGING INDUSTRIES



Photo by: Ben Hoffman



GOBIERNO TERRITORIAL AUTÓNOMO
DE LA NACIÓN WAMPÍS



FENAMAD
Federación Nativa del Río
Madre de Dios y Afluentes
Por la unidad, y defensa de los bosques y respeto a los pueblos indígenas



EARTHRIGHTS INTERNATIONAL

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FRONTLINES OF **CLIMATE** **JUSTICE**

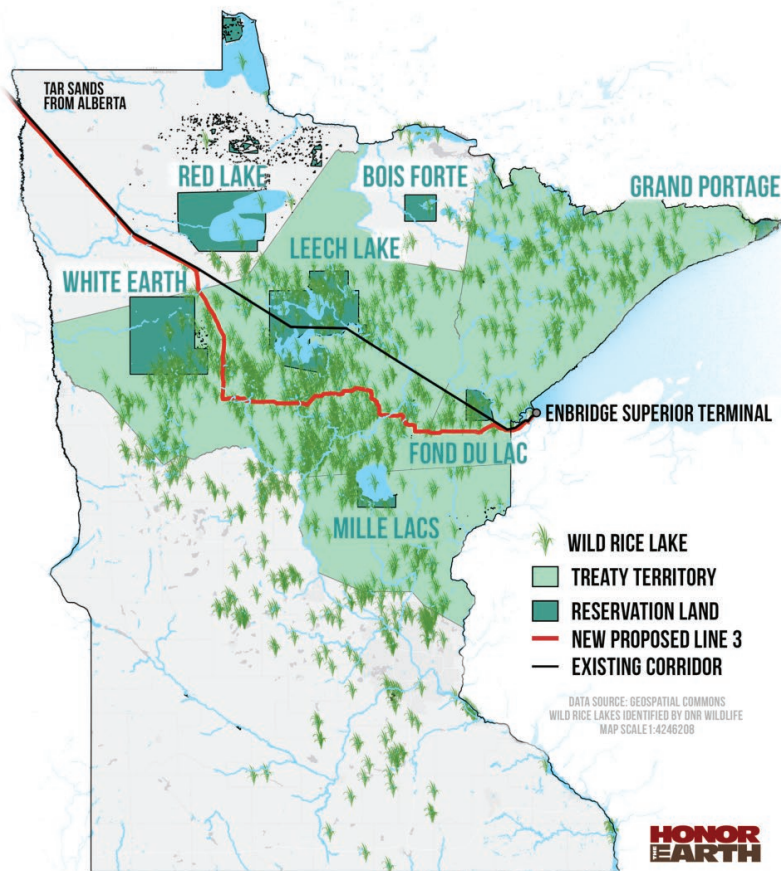
“I’m sitting in Pennington County jail covered in bruises, waiting to be arraigned. Rubber bullet welts spread purple down my arms and back, courtesy of Minnesota police, who have reportedly billed nearly \$2 million in security-related costs to a fund set up by Canadian pipeline giant Enbridge. Enbridge is here to expand tar sands oil through my people’s territory. They seek to build a pipeline with the emissions equivalent of 50 new coal-fired plants, **slamming another nail into the coffin of climate doom.”**

**—Tara Houska, water protector,
Founder of Giniw Collective¹**

The Frontlines of Climate Justice campaign builds on the work of local communities and defenders around the world who have built a global climate movement resisting climate-damaging industries and denouncing the inaction of world leaders. The campaign amplifies their voices and exposes the tactics used by extractive and agribusiness companies to violate communities’ rights. Our goal is to ensure that policymakers recognize the central role that frontline communities must play in the global response to the climate crisis and to defend the rights of frontline communities to speak up without fear of reprisals.

INTRODUCTION

ENBRIDGE LINE 3 IMPACT ON TREATY RESOURCES



LEARN MORE AT [STOPLINE3.ORG](https://stopline3.org)

Map courtesy: StopLine3.org

Minnesota authorities nor the Biden administration has stepped in to pull the permits. A federal court also denied a motion for a preliminary injunction to stop the construction in early 2021 (based on a challenge to the federal Clean Water Act permit). Meanwhile, Indigenous-led water protectors and those associated with them have faced substantial repression at the hands of public security forces (county sheriffs), including surveillance, harassment, intimidation, pretextual stops and arrests, and undignified conditions of confinement. Sheriffs (police) carry out the repression, receiving financial support from Enbridge for their time and efforts via an “escrow trust” arrangement.

Line 3 is a pipeline expansion that anticipates bringing 760,000 barrels of tar sands crude oil per day from Alberta, Canada, to Superior, Wisconsin. Pipeline opponents estimate that the project has a climate impact on par with Keystone XL and poses an existential threat to waterways like the Mississippi River. Most of the pipeline route in the United States runs through northern Minnesota, including the treaty territory of multiple Anishinaabe tribes holding rights to hunt, fish, and harvest wild rice. Enbridge, a Canadian pipeline company responsible for the largest inland oil spill in the United States, is behind the project. The pipeline corridor runs through untouched wetlands and the Mississippi River headwaters to the shore of Lake Superior. Construction on the pipeline began in late 2020 and was completed in October 2021, despite vociferous opposition from an Indigenous-led movement of water protectors in Minnesota. The pipeline was constructed subject to both state and federal permits, whose validity has been challenged in still-pending litigation and appeals.

Indigenous communities are leading the movement to oppose the pipeline through legal advocacy, organizing, and direct action. Despite their efforts, neither the

THE ANISHINAABE PEOPLES: A COMMUNITY ON THE FRONTLINES OF THE CLIMATE CRISIS

“During the course of the last year we have been on our lands, Ojibwe Territory, defending our territory from this pipeline that we did not approve”

—Tara Houska, water protector, Founder of Giniw Collective²

For centuries, the Anishinaabe Indigenous peoples have lived in the upper Great Lakes region of what is now Canada and the United States. They lived a semi-nomadic life with a dependence on maple sap, fish, venison, and wild rice. From 1830 to 1960, with an increase of U.S. settlers encroaching on Anishinaabe land, the Anishinaabe peoples signed cession treaties with the United States government, exchanging large tracts of land for promises of money, schooling, and goods. By the terms of the treaties, Indigenous peoples retained the right to hunt, fish, and gather on the ceded (off-reservation) lands. These treaty rights continue to exist today, and the harvesting of wild rice continues to be a centerpiece of Anishinaabe culture.

In 1999, such rights were reaffirmed by the U.S. Supreme Court in the case *Minnesota v. Mille Lacs Band of Chippewa Indians*. In the case, the Court reaffirmed the rights of Ojibwe peoples, an Anishinaabe nation, to hunt, fish, and gather on the lands it had ceded to the federal government in the 1837 and 1855 treaties against improper restrictions imposed by the state governments of Michigan, Minnesota, and Wisconsin.

The territory of the Anishinaabe peoples encompasses a large number of water sources. The Line 3 pipeline crosses 227 lakes and rivers (including the Mississippi River), over 800 protected wetlands, and runs through ceded lands where Red Lake Band of Chippewa Indians and White Earth Band of Ojibwe exercise their rights. Indigenous water protectors have been leading the



Photo by: Audrey Schreiber

resistance against the project, calling on the Biden administration to stop the pipeline’s construction and protect their water sources and treaty rights. The Anishinaabe peoples are on the frontlines of the climate crisis, and their opposition to climate-damaging industries has been met with violence and repression.

ENBRIDGE'S LINE 3 PIPELINE: A HISTORY OF ENVIRONMENTAL HARMS

The original Line 3 pipeline was first built in the 1960s to carry oil from Edmonton, Alberta, to Superior, Wisconsin, passing through northern Minnesota. In March 1991, the pipeline ruptured near Grand Rapids, Minnesota, spilling over 1.7 million gallons of oil, which flowed into the Prairie River, a tributary of the Mississippi. This spill became the largest inland oil spill in the U.S. and would become the first major incident in a long line of chronic problems, including small spills and large catastrophes for which Enbridge is responsible. A Greenpeace USA report found that from 2002 to 2018, Enbridge and its joint ventures and subsidiaries reported 307 hazardous liquids incidents. “These spills released a total of 66,059 barrels (2.8 million gallons, or more than four Olympic-sized swimming pools) of hazardous liquids,” says the report.³

Twenty years later, in July 2010, another pipeline operated by Enbridge (Line 6B) broke, with over one million gallons of dilbit oil released into a tributary of the Kalamazoo River, displacing hundreds and requiring a multiyear clean-up operation. In 2014, Enbridge proposed constructing the new Line 3 “replacement” project. The U.S. portion of the Line 3 project — which in addition to its sections in northern Minnesota also includes small new sections in North Dakota and

Wisconsin — cost about \$4 billion in total.⁴ Tar sands are costly and carbon-intensive fuels that impose major harms on water supplies, including toxic pollution. Despite these environmental impacts and the opposition of Indigenous peoples in the area, in June 2018, the Minnesota Public Utilities Commission (PUC) voted to grant Enbridge a Certificate of Need for the new Line 3 pipeline and a Route Permit for the proposed path. As has been documented by water protectors, the PUC approved the project despite the serious concerns expressed by other state agencies that had reviewed the plans. The Minnesota Pollution Control Agency raised serious concerns related to the applicant’s proposed route and the susceptibility of the aquifers to pollution. The Minnesota Department of Natural Resources also expressed concern about the proposed route and the completeness of the Department of Commerce’s environmental impact statement. The Department of Commerce’s assessment found no need for the project and recommended not permitting it.⁵

In July of that year, legal actions were filed challenging the certificate of need and the route permit, as well as the adequacy of the Environmental Impact Statement. Plaintiffs included the Red Lake, White Earth, and Mille Lacs

Photo by: Audrey Schreiber



*if the wild rice and trees and water are gone
will you still love oil?*

Bands; the Minnesota Department of Commerce; Honor the Earth; Youth Climate Intervenors; Friends of the Headwaters; and the Sierra Club. In September and October, the PUC issued a new Certificate of Need and a new Route Permit reflecting a changed path.

In May 2020, the Minnesota Public Utilities Commission (PUC) issued a decision granting Enbridge's pipeline routing permit subject to a series of conditions. Following the terms of the permit, Enbridge established a "Public Safety Escrow Trust" from which police can seek reimbursement for Line 3-related activities and made an initial deposit of \$250,000.

In November, the Minnesota Pollution Control Agency (MPCA) issued water crossing permits for the pipeline. In response, 12 members of the agency's Environmental Justice Advisory Group collectively and publicly resigned, citing concerns for climate change and violations of treaty rights, arguing that they "cannot continue to legitimize and provide cover for the MPCA's war on [B]lack and [B]rown people."⁶

In November, the United States Army Corps of Engineers issued important permits authorizing aspects of the construction of the new Line 3 pipeline. In December, Enbridge began construction on the new Line 3 pipeline. In August of 2021, the Minnesota Pollution Control Agency announced that Enbridge spilled drilling fluid 28 times at 12 river crossings during the summer. The information was released after Minnesota lawmakers sent a letter to the agency.⁷ In October, Enbridge announced in a press release that construction of Line 3 was complete and tar sands crude oil would start to flow through the pipeline.⁸ For years, water protectors had feared the threats to their water and lands that Line 3 would impose. Those threats are now a reality.



Photo by: Audrey Schreiber

WATER PROTECTORS RESIST THE CONSTRUCTION OF THE CLIMATE-DAMAGING LINE 3 PROJECT



Indigenous women water protectors have been leading the opposition to Line 3 since 2014. They denounced that the project would affect Indigenous rights, water supplies, and the climate. The movement has been active in the media to inform the public about the ongoing conflict in Minnesota and the impacts of Line 3 in the area.⁹ The campaign has grown as activists and volunteers from across the country have traveled to the camps to show their solidarity with Indigenous peoples and to demand cancellation of the project.

In February of 2017, water protectors set up the first Line 3 resistance camps in northern Minnesota. Since then, several camps have formed along the construction route,¹⁰ and water protectors have led a growing advocacy and mobilization campaign calling on the U.S. government to cancel the project.

Water protectors have also engaged in civil disobedience and direct action as part of their

efforts, including chaining themselves to excavators, drills, and barrels of cement, and holding sit-ins. The police have responded with violence and repression.

The Line 3 campaign has also focused on financial institutions funding the project. Through the Stop the Money Pipeline coalition, activists are demanding that banks stop funding the project.¹¹ The Defund Line 3 campaign has been joined by hundreds of activists in various cities across the United States and abroad. The campaign targets almost 20 banks that have backed loans for Enbridge. The objective is to raise attention to the role of financial institutions funding climate-damaging projects in the context of the climate crisis.

Indigenous water protectors have also turned to the judicial system. In 2018, Indigenous peoples and their organizations first initiated legal actions to challenge the decision of the

Minnesota Public Utilities Commission to grant Enbridge a certificate of need for the pipeline. In December 2020, the Red Lake Band of Chippewa Indians, the White Earth Band of Ojibwe, Honor the Earth, and the Sierra Club filed a lawsuit in the United States District Court for the District of Columbia challenging the permits issued in November of 2020 by the Army Corps of Engineers to authorize the construction of Line 3 and seeking a preliminary injunction that would halt construction. However, on February 7, 2021, the United States District Court for the District of Columbia denied the motion for a preliminary injunction filed in the case.

In August 2021, water protectors filed an action in the Tribal Court of the White Earth Band of Ojibwe in Minnesota to protect the rights of Manoomin (wild rice). Manoomin is an essential food for the Anishinaabe Indigenous peoples. The case is the first one brought in a tribal court to enforce the rights of nature, and the first rights of nature case brought to enforce Treaty guarantees that protect the rights of the tribes to gather wild rice and other aquatic plants from public waters on Treaty lands.¹²

Indigenous movement leaders have contacted international human rights mechanisms as part of their efforts to protect their rights and their territory. In March 2021, Honor the Earth and the Giniw Collective submitted a Request for Early Warning Measures to the United Nations Committee on the Elimination of Racial Discrimination (CERD) detailing the continuing violations of Indigenous Peoples' rights, including the right to free, prior, and informed consent; the right to health; the right to culture; and the right to security and to be free from violence. In August, CERD published a letter to the U.S. government requesting that the United States respond to these allegations.¹³ The deadline for the U.S. government to respond to the letter was October 15, 2021. The Indigenous organizations also submitted a complaint to the U.N. special rapporteur on human rights defenders to share information about escalating concerns of egregious human rights and Indigenous rights violations related to the pipeline.¹⁴

Photo by: Audrey Schreiber



INDIGENOUS WATER PROTECTORS FACE REPRESSION AND DISPROPORTIONATE USE OF FORCE BECAUSE OF THEIR OPPOSITION TO LINE 3



Photo by: Keri Pickett, Honor the Earth

Water protectors opposing Line 3 have experienced repression, harassment, and violence. According to Indigenous activists, more than 900 people have been arrested on the frontlines of the resistance.¹⁵ Most water protectors are cited with misdemeanors. However, some of them have been charged with gross misdemeanors and even face felony charges. Water protectors face disproportionate charges as a means of intimidating them, dissuading free speech, and deterring future protests. The media has reported that the growing number of legal cases is straining resources in the Minnesota counties where the arrests are taking place, as water protectors have been waiting for months to access a public defender. The lack of public defenders is causing delays in the processes and violations of water protectors' constitutional rights.¹⁶

On June 28, 2021 police officers who patrolled the Line 3 construction resorted to illegally blocking the entrance of one of the organizers' camps. Namewag Camp, organized by the Indigenous women and two-spirit led organization Giniw Collective, is one of the many camps that water protectors have set up along the Line 3 construction route. Located on private property, the camp serves as a convergence space and home for Indigenous-led organizing, decolonization and treaty rights trainings, and religious activities by water protectors seeking to defend the untouched wetlands and the treaty territory of Anishinaabe peoples. The Hubbard County sheriff's deputies blocked the entrance of the camp, preventing water protectors from gaining access, and issued criminal citations against them.



Photo by: Audrey Schreiber

On July 16, water protectors filed a lawsuit against Hubbard County and its Sheriff Corwyn Aukes, seeking the removal of the unlawful blockade of Namewag camp. The water protectors asked the judge to grant a temporary restraining order. On July 23, the District Court granted a temporary restraining order requiring the police to remove their blockade and to stop issuing criminal citations for the water protectors' use of the driveway.¹⁷ On September 24, the plaintiffs filed for a temporary injunction against Hubbard County and the sheriff to restrain their unlawful blockade against the Namewag camp at least for the

duration of the lawsuit. On December 3, the Court granted the temporary injunction. The lawsuit is still pending.

As the resistance to Line 3 has grown, so has repression against water protectors. On July 29, a group of unarmed water protectors protesting the pipeline in Thief River Falls, Minnesota was tear-gassed, shot with rubber bullets, and arrested. Activists have also been denouncing the police's use of pain compliance techniques against the protestors.

“It was a really brutal scene. The level of force being used, partnered with the very close range that law enforcement was facing us, led to some pretty serious injuries... It was really an extreme level of force, partnered with a really punitive and oppressive style of jailing.”¹⁸

Water protectors are facing harassment and surveillance through tactics typical of a corporate counterinsurgency strategy against the resistance movement. Counterinsurgency strategies have been used in other pipeline conflicts, including Standing Rock. When the permit for the construction of Line 3 was granted, it included a specific condition banning Enbridge and its contractors from participating in counterinsurgency tactics or misinformation campaigns.¹⁹ However, water protectors have experienced constant harassment, baseless pullovers by sheriff's deputies, and 24-hour surveillance. Activists believe that police are constantly stopping them as a means of collecting their personal information.²⁰ Water protectors have said they believe the Minnesota State Patrol is in close coordination with Enbridge and its security contractors, including regularly sharing intelligence such as the names of people attending anti-Line 3 meetings and coordinating actions.

PRIVATIZING THE USE OF POLICE FORCE: ENBRIDGE'S ESCROW TRUST TO FUND LINE 3 POLICING

“[The escrow account] incentivizes and encourages police officers to repress, suppress, surveil and harass Indigenous peoples and our allies that are helping us to try to stop this pipeline from happening in our treaty territory. It is a very clear pattern of aggression and cooperation... it is a precedent that is very dangerous, and everyone should be afraid of this regardless of whether or not they engage in pipeline protests.”

—Tara Houska, water protector, Founder of Giniw Collective²¹

In May of 2020, the Minnesota Public Utilities Commission (PUC) issued a decision granting Enbridge’s pipeline routing permit subject to a series of conditions. Under the terms of the permit, Enbridge established a Public Safety Escrow Trust from which police can seek reimbursement for Line 3-related activities and made an initial deposit of \$250,000. By August, 2021 through the Public Safety Escrow Trust, Enbridge had reimbursed the police \$2.4 million for effectively private security services.²² By October, that number had grown to over \$3 million.²³

When issuing the permit for Line 3, the PUC cited increased law enforcement expenses around pipelines in other parts of the country as a reason for establishing the fund. The escrow account is managed by a state-appointed official to whom agencies send requests for reimbursement of costs related to “coordination of public safety

and emergency responders, public safety-related costs for maintaining the peace in and around the construction site, review, and oversight of any private security services,” and other similar costs.²⁴

Activists believe the escrow account arrangement has incentivized repression by the police. A special task force of 18 sheriff’s departments, the Northern Lights Task Force, was specifically created to respond to pipeline protests in Minnesota.²⁵ According to media reports, the escrow account funds the services of this task force.²⁶ For activists, the escrow account arrangement essentially privatizes the use of force and allows Enbridge to use police force to crack down on the protestors opposing Line 3.²⁷ Water protectors allege that the reimbursements incentivize the police force to increase the level of aggression, surveillance, and harassment against protestors.²⁸

Photo by: Audrey Schreiber



ANALYSIS

The Line 3 pipeline: A climate-damaging project

“The International Energy Agency tells us we don’t actually need any new investment in oil, coal or gas production . . . [It is] simply not necessary to meet our energy needs given other technologies that are online and are coming online.”²⁹

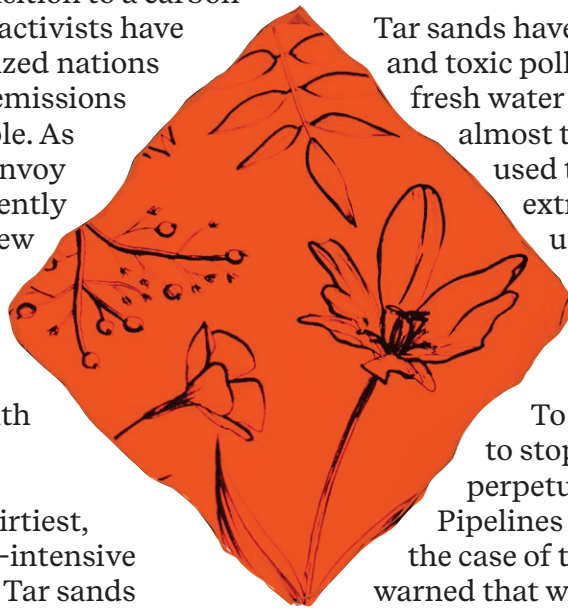
The Line 3 pipeline has profound impacts on the climate. Based on the amount of carbon in the oil that Line 3 moves, water protectors calculate that building it is equivalent to building 50 new coal-fired power plants.³⁰ If we want a chance to avoid the worst effects of the climate crisis, countries need to step up their commitments to reduce carbon emissions and transition to a carbon-neutral economy. Climate activists have been calling for industrialized nations to commit to zero carbon emissions by 2030 or before if possible. As U.S. Special Presidential Envoy for Climate John Kerry recently said, there is no need for new fossil fuel investments if the world wants to meet its climate goals. New tar sands pipelines such as Line 3 are incompatible with these goals.

Tar sands are among the dirtiest, costliest, and most carbon-intensive fuel sources on the planet. Tar sands contain bitumen, a thick substance made of hydrocarbons that are used to produce gasoline and other petroleum products. The difficulty of the extraction and refining of tar sands to obtain liquid oil makes the process more expensive than traditional oil extraction. It is calculated that a gallon of gasoline made from tar sands produces

about 15% more carbon dioxide emissions than one made from conventional oil. According to the Union of Concerned Scientists, tar sands account for about 5% of all U.S. gasoline, but production has been scaling up in recent years with serious consequences for the environment and the climate crisis.³¹

Tar sands have major impacts on water supplies and toxic pollution. Approximately 5.9 gallons of fresh water are consumed to process tar sands, almost three times more than the water used to produce conventional oil.³² The extraction of tar sands also requires the use of toxic substances that pollute the water. This water waste is stored in ponds that threaten groundwater because of the possibility of leaks.

To combat climate change, we need to stop building infrastructure that perpetuates our reliance on fossil fuels. Pipelines have lifetimes of 40 years—50 in the case of tar sands projects. Experts have warned that when building pipelines, developers incur large upfront construction costs that they hope to more than recoup over the long lifetime of the project.³³ This would mean that Line 3 would continue to pollute in 2070, way beyond the date when countries should achieve carbon neutrality. Additionally, new fossil fuel infrastructure opens the door for new extraction projects: “Pipelines are



the keys that open up untapped reserves, by giving producers an affordable, reliable means to get oil to market.”³⁴ When pipeline capacity is limited, oil production is curtailed.³⁵

The construction of Line 3 is incompatible with the Biden administration’s climate pledges. In August 2021, the Intergovernmental Panel on Climate Change (IPCC), the U.N. body that assesses climate science, released a report revealing that human activity is unequivocally driving climate change and that some of the effects of the climate crisis will be irreversible for hundreds of years. The report was released in the run up to the

U.N. Climate Change Conference, COP 26. The conference was the first since the United States rejoined the Paris Agreement. The U.S. delegation, led by Special Envoy John Kerry, met with world leaders to advocate for more ambitious climate commitments that allow faster decarbonization of the economy.³⁶ However, the impacts of Line 3 for the climate, and the violations of Indigenous communities’ rights associated with the construction of the project are incompatible with the ambitious climate action commitments that the Biden administration was calling for in the lead up to COP 26.

Violations of the rights to freedom of expression, assembly, and association against the Indigenous-led campaign to stop Line 3

Anishinaabe peoples started campaigning against Line 3 more than 7 years ago. When construction started in 2017, they took their campaign to the lands, setting up the first camps along the route. Indigenous water protectors and non-Indigenous allies joined the camps to demand the end of the project and the respect of Indigenous rights. Because of their opposition to Line 3, water protectors have been heavily repressed, harassed, and criminalized.

Indigenous peoples throughout the world are experiencing increasing violence because of their opposition to climate-damaging projects. The U.N. special rapporteur on the rights of Indigenous peoples has highlighted the drastic increase in acts of violence, criminalization, and threats to which Indigenous peoples have been subjected because of their opposition to company interests.³⁷ Because most of these climate-damaging projects are located on Indigenous lands or cross through Indigenous territories, the pattern of failures in the consultation processes and the repression and silencing of opposition movements continues, endangering the lives and livelihoods of an already vulnerable population.

Freedom of expression, association, and assembly are guaranteed by the U.S. constitution but private companies and governments use the legal

system to silence the opposition to their projects.³⁸ These rights are also recognized and protected under international law.³⁹ However, private companies, as well as government officials, have used civil and criminal laws to stifle and silence opposition to climate-damaging projects. The U.S. is at the forefront of a regressive trend where countries adopt legislation to curtail the right to protest around “critical infrastructure,” which often includes specific references to oil and gas pipelines.⁴⁰ Such laws started to be adopted in 2016 after the Standing Rock Reservation became known globally as a symbol of the struggles of Indigenous peoples to defend their territories from damaging fossil fuel projects.

According to the U.S. Protest Law Tracker, 16 states passed “critical infrastructure”-related legislation between 2016 and 2021.⁴¹ Some of these laws impose heavy sanctions for disruptive protests near pipelines and other infrastructure. Nine state laws have classified these types of demonstrations as felonies.⁴² The U.N. special rapporteur on freedom of assembly and association has repeatedly stated that when states impose blanket prohibitions on freedom of assembly, they are failing their human rights obligations. The UN expert has specifically highlighted how “reliance on overly broad terms such as “critical infrastructure,” “vital installations,” and “national

interests” is an attempt to shield particular economic ventures from protests.⁴³

Likely due to the growing Indigenous-led protests against Line 3, Minnesota state legislators have since January 2021 introduced four bills to deter protests against pipelines and other critical infrastructure. Such bills are trying to create new civil and criminal liability for protesters and their organizations on pipeline property.⁴⁴ These bills are still pending. To protect the right to freedom of assembly, these types of laws in the United States should be repealed and no more laws of this kind, including the ones pending at the Minnesota Legislature, should be adopted.

Water protectors opposing Line 3 have engaged in marches, demonstrations, sit-ins, hunger strikes, and artistic performances as part of their protests. In response, more than 900 water protectors have been arrested, and many of them are still facing criminal charges. Many water protectors are being criminalized just for engaging in lawful protest activities to demonstrate their opposition to Line 3. For example, on June 15, 2021, 29 water protectors were arrested and charged with public nuisance and unlawful assembly while engaged in lawful protest activity: protesters were holding signs and chanting on the side of a road (i.e., public property).⁴⁵ Before the arrest, water protectors were not even given a warning to disperse.

The criminalization of climate activists that engage in protests or other acts of public opposition to climate-damaging projects is one of the main tactics used worldwide to repress the

climate movement. Whether activists are convicted or not, criminal prosecutions and other forms of legal harassment impose a heavy burden on them and their families.⁴⁶ Climate defenders must spend valuable time and resources defending themselves instead of continuing to work for their causes.

As months have passed, water protectors in Minnesota have seen these cases escalate and they are now facing disproportionate charges. They see these charges as a means to intimidate them, dissuade free speech, and deter future protests around pipelines. Criminal charges against Line 3 protesters have escalated since the protests began early this year, even though the activists’ actions have not been violent.⁴⁷

In the case of Line 3, criminalization is becoming so critical that the growing number of legal cases is straining resources in Minnesota’s counties where the arrests are taking place. Protestors wait for months just to access a public defender; this delays the processes and violates the protesters’ constitutional rights. Hubbard County, one of the Minnesota counties with the largest number of arrests, is overseeing roughly 500 criminal cases. The County Public Defender’s office has said it only has one full-time attorney and is contracting with private attorneys to represent all the defendants.⁴⁸

As part of their movement to stop Line 3, water protectors have engaged in direct action and civil disobedience techniques such as roadblocks and lockdowns. Water protectors know they are at a disadvantage, as they don’t have the resources

Photo by: Ben Hoffman



Enbridge has to spend on public campaigning. They consider direct action and civil disobedience as a last resort to stop the project.⁴⁹ These types of techniques have been widely used by human rights and social movements worldwide. Given the magnitude of the crisis, and the inaction of governments, climate movements around the world are now adopting them.⁵⁰

International law protects collective disobedience or direct-action campaigns provided they are nonviolent, meaning that they do not involve “physical force against others that are likely to result in injury or death, or serious damage to property.”⁵¹ By contrast, disruption of movement or daily activities, do not amount to “violence” and are therefore protected under international law. The U.N. special rapporteur on freedom of peaceful assembly in his most recent report noted that in the context of the climate crisis, and because of the high level of public interest involved in advancing climate justice, civil disobedience strategies and direct action have become a fundamental tool for climate activists.⁵²

Extensive surveillance by law enforcement is another angle of the criminalization of environmental and climate protesters and their organizations. Line 3 water protectors have experienced constant harassment, baseless pullovers by sheriffs, and 24-hour surveillance. Water protectors are pulled over by the police and interrogated and are sometimes accused of committing small traffic infractions.⁵³ Activists believe this is a tactic to gather people’s private information.

These types of surveillance tactics have been used worldwide to obtain information to frustrate protestors and deter them from participating in the climate justice movement.⁵⁴ On many occasions, private companies have hired surveillance companies to monitor the movements of climate activists.⁵⁵ In the Line 3 case, however, the escrow trust has created the incentives for public police forces to engage in the same activity. Media investigations have shown that the company meets daily with police to discuss intelligence gathering and patrols.⁵⁶

In the U.S., criminalizing lawful protests violates the First Amendment’s speech and assembly rights, the Fourth Amendment’s protections against unreasonable searches and seizures, and the Eighth Amendment’s protections against cruel and unusual punishments, all as made applicable to states and their agents through the Fourteenth Amendment. In the case of Line 3 and the violent police repression water protectors have faced, these practices additionally represent violations of analogous provisions of the Constitution of the State of Minnesota.

Like the Anishinaabe peoples in Northern Minnesota, many Indigenous groups worldwide experience increased repression and violence linked to their climate activism and the demand for the protection of their rights. These growing violations of freedom of assembly of Indigenous climate activists are a major obstacle to climate justice.



The use of pain compliance techniques to deter climate defenders protesting Line 3

“The most pressing challenge facing climate and environmental justice advocates is the threat of violence.”

—Clement Voule, U.N. special rapporteur on freedom of assembly and association ⁵⁷

Line 3 water protectors have denounced the escalation of the police’s use of force around Line 3. Water protectors alleged that the response of the police to the demonstrations and direct actions organized by protesters has grown more brutal. For example, at the beginning of August, water protectors locked themselves to Line 3 construction equipment as part of their civil disobedience strategy to demand the end of the project. Police used pain compliance to remove them from the construction equipment. Pain compliance is defined as the use of painful stimulus to control a person; once compliance is achieved the pain is reduced or removed. Water protectors have called these measures torture. Some of them have publicly denounced through videos on social media how they have sustained possibly permanent injuries in their bodies because of the pain compliance inflicted by the Minnesota police.⁵⁸

Under international law, states have an obligation to allow peaceful assemblies to take place without unwarranted interference. Peaceful assemblies have been defined as those that do

not engage in violence, understood as “the use by participants of physical force against others that are likely to result in injury or death, or serious property damage.”⁵⁹ Peaceful assemblies include those that cause a certain level of disruption of ordinary life, including inconveniences to business activities.⁶⁰ The U.N. special rapporteur on freedom of assembly and association has specifically said that in the case of a business that engages in harmful activities, such as fossil fuel companies, they should accept a reasonable level of economic loss caused by the disruption of their business activities due to protests to oppose their activities.⁶¹

States also have the obligation to facilitate the exercise of the right to freedom of peaceful assembly and to protect the participants in such assemblies.⁶² This obligation entails that states not disperse or disrupt peaceful assemblies without a compelling justification. At the same time, force should only be used in very strict terms and under the principles of legality, necessity, proportionality, precaution, and nondiscrimination.⁶³

Enbridge's escrow account has incentivized the repression by the Minnesota Police

“Our police are beholden to a foreign company. They are working hand-in-hand with Big Oil. They are actively working for a company. Their duty is owed to the state of Minnesota and the tribal citizens of Minnesota.”

—Tara Houska, water protector, Founder of Giniw Collective⁶⁴

When the Minnesota Public Utilities Commission (PUC) granted Enbridge's pipeline routing permit, it also required that the company establish a Public Safety Escrow Trust from which police can seek reimbursement for Line 3 policing-related expenses. According to the media, as of October 6, 2021 Enbridge has reimbursed Minnesota police over \$3 million.⁶⁵ More than 900 water protectors have been arrested at Line 3. The expenses related to those arrests, including the violent repression of people exercising civil disobedience, have been covered by Enbridge.

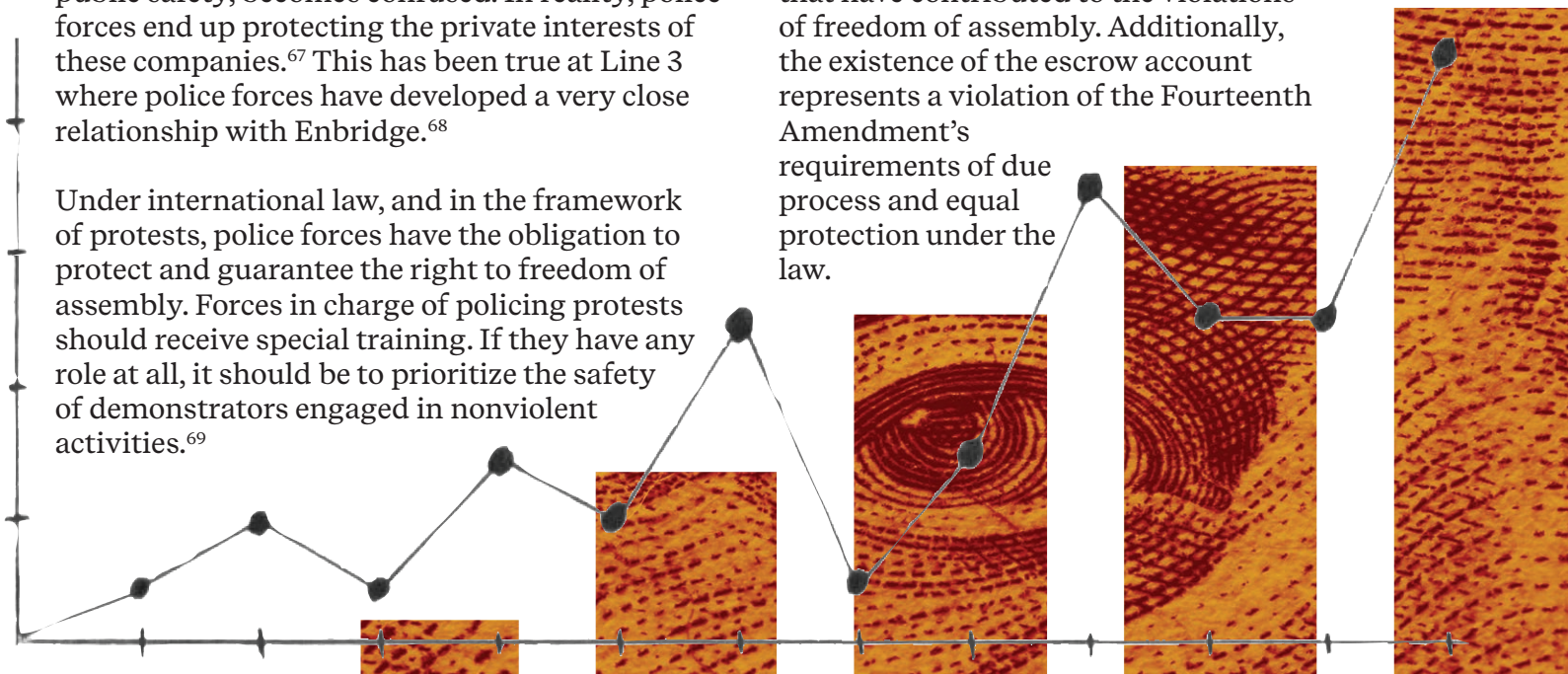
The establishment of agreements between police forces and extractive companies to provide security services to their projects is not something new, but unfortunately is a trend that is repeated in many countries worldwide.⁶⁶ When these agreements are in place, the role of public security forces, which should be to ensure public safety, becomes confused. In reality, police forces end up protecting the private interests of these companies.⁶⁷ This has been true at Line 3 where police forces have developed a very close relationship with Enbridge.⁶⁸

Under international law, and in the framework of protests, police forces have the obligation to protect and guarantee the right to freedom of assembly. Forces in charge of policing protests should receive special training. If they have any role at all, it should be to prioritize the safety of demonstrators engaged in nonviolent activities.⁶⁹

When police forces enter into this type of economic agreement with private companies, they risk losing their role of guaranteeing the right of peaceful assembly of demonstrators opposing such companies' interests. In some cases, as has happened in Line 3, these agreements end up incentivizing the repression and human rights violations against those who oppose the projects, as police forces have economic incentive to arrest protestors.

“You wish they were there to protect and serve us, and not to protect and serve a pipeline and a company.... It's the antithesis of democracy in my mind.” Simone Senogles, member of the Red Lake Nation and leadership team member for the Indigenous Environmental Network⁷⁰

At Line 3, the existence of the Public Safety Escrow Trust has created perverse economic incentives that have contributed to the violations of freedom of assembly. Additionally, the existence of the escrow account represents a violation of the Fourteenth Amendment's requirements of due process and equal protection under the law.



CONCLUSION



Photo by: Audrey Schreiber

Indigenous peoples continue to lead the fight to demand climate justice while companies and governments try to silence them. The Anishinaabe peoples in Minnesota are leading a national movement to stop the now completed Line 3 tar sands pipeline. Through legal action, advocacy, organizing, and direct action, they have built a powerful movement calling on the Minnesota government and the Biden administration to protect their rights and address the climate crisis. Line 3 should be the last tar sands pipeline in the United States. Recently civil society sent a petition to the U.S. Army Corps of Engineers urging it to stop issuing permits and revoke illegally and inappropriately issued permits for fossil fuel infrastructure projects.⁷¹ The petition outlines how in the context of the climate crisis, these permits are contrary to the public interest. The U.S. needs to stop building infrastructure to serve climate-damaging industries that delay the decarbonization of the economy.

Line 3 water protectors faced repression and criminalization while exercising their right to freedom of assembly and opposing the climate-damaging Line 3 project. Water protectors engaging in protests against Line 3 were heavily repressed by the police and more than 900 water protectors were arrested. Many of them are still facing criminal charges that are straining the resources of local governments in Minnesota, which cannot respond to this large number of criminal processes. Indigenous and climate defenders exercising their right to freedom of assembly to demand climate justice and oppose climate-damaging projects should be protected. Given the threats imposed by the climate crisis, guaranteeing the right to peaceful assembly for climate activists is a key step toward achieving climate justice. Police forces should serve the public interest and refrain from repressing Indigenous communities such as the Anishinaabe peoples in Minnesota for protesting climate-damaging projects.

The escrow account set up by Enbridge as a condition in the construction permit of Line 3 has indeed incentivized the repression of the Indigenous opposition movements to the project. Indigenous water protectors and those associated with them have faced substantial repression at the hands of public security forces, including surveillance, harassment, intimidation, and arrests. The escrow account is funding such activities. The escrow account has developed into a relationship between the police and the company, where the police are no longer acting to protect civilians but rather to favor the commercial interests of a company. This is a worldwide trend that violates the rights of communities opposing fossil fuel destruction. **Police forces should refrain from engaging in any type of agreement to provide security services to private companies but should work to guarantee the rights of climate defenders demanding climate justice.**

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