

impact of the Plan B Project on the two cities, at most, is only incrementally increased over existing conditions and significantly less than under Plan A. However, pursuant to Minnesota Statutes Section 103G.311, upon the filing of a valid contested case hearing, the order issuing the permit is no longer final, and the permit is put into abeyance and ceases to be valid. Minn. Stat. § 103G.311 (“The commissioner must...make a determination on issuing or denying the permit as though the previous order had not been made.”) Thus, despite the fact that the DNR believes the Plan B Project is permissible, subject to conditions contained in the permit, the fact remains that Minnesota law allows these local units of government to initiate a contested case hearing, thereby putting the Permit into abeyance pending the outcome of the contested case hearing and a final order of the DNR Commissioner.

Regardless, the DNR believed when it issued the Permit and believes today that allowing the Plan B Project to proceed forward as permitted is in the public interest. However, Minnesota law precludes the State from allowing the Plan B Project to proceed absent a court order that any construction on the Plan B Project be in accordance with the terms and conditions of the state Permit. Absent such an order, the state is compelled to request that this court maintain its current injunction to maintain the integrity of Minnesota’s permitting process under Chapter 103G.