

Unfortunately, the request for contested case hearing puts the Permit into abeyance pending the outcome of the contested case hearing. Thus, as of today, there remains no valid state permit for the Plan B Project. Allowing the Plan B Project to proceed forward without the Permit and the associated conditions or a court order encompassing the required Permit conditions would undermine Minnesota's entire public waters permitting program. Furthermore, if the Plan B Project modifying of the injunction did not include in the order a requirement to comply with the Permit conditions, the Plan B Project would no longer be permissible under Minnesota law for the Permit conditions are expressly designed to address such issues as environmental mitigation and compliance with the acquisition requirements of the Minnesota Constitution.

2. The MERA Claim Against The Diversion Authority.

The Minnesota Environmental Rights Act ("MERA") allows a person "to maintain a civil action for declaratory or equitable relief against another person for the protection of the air, water, land or other natural resources located within the state, whether publicly or private owned, from pollution, impairment, or destruction." Minn. Stat. 116B.03, Subd. 1. There are two distinct paths to prove a MERA violation. The first requires a showing of conduct that "violates or is likely to violate any environmental quality standard, permit, or similar rule." Minn. Stat. 116B.02, Subd. 5. The second requires a showing of conduct that "materially adversely affects or is likely to materially adversely affect the environment." *Id.*

Regarding the first path, this Court has already rejected the Diversion Authority's argument that the Diversion Authority is not required to obtain a Minnesota DNR permit