

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BAD RIVER BAND OF LAKE
SUPERIOR CHIPPEWA,
Plaintiff

-v.-

UNITED STATES ARMY
CORPS OF ENGINEERS,
Defendant

Civil Case No: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

ADDRESSES OF PARTIES:

BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA
72682 Maple Street
Ashland, WI 54806

U.S. ARMY CORPS OF ENGINEERS
441 G St., NW
Washington, DC 20314

INTRODUCTION

1. Plaintiff Bad River Band of Lake Superior Chippewa (“Band”) challenges the unlawful action by Defendant U.S. Army Corps of Engineers (“Corps”) authorizing the construction of forty-one miles of new pipeline that will surround the Band’s Reservation on three sides. In approving the construction, the Corps failed to conduct the required environmental reviews and violated the National Environmental Policy Act (“NEPA”), the Clean Water Act (“CWA”), and the Administrative Procedure Act (“APA”).

2. For over seventy years, Enbridge Energy, LP (“Enbridge”) has operated Line 5, a pipeline that transports over 500,000 barrels of crude oil and natural gas liquids across the Band’s Reservation each day. Line 5 spilled oil on multiple occasions across its lifetime, damaging surrounding ecosystems. The Band refused to extend Enbridge’s easement to operate on the Reservation when the easements expired in 2013 due to environmental and water resources concerns. The Band’s tribal council passed several resolutions calling for the removal of Line 5 from the Bad River Watershed entirely.

3. Enbridge continued operating Line 5 through the Reservation after its easements expired. Enbridge then applied to the Corps for a permit to construct forty-one miles of new pipeline around the Reservation but within the Bad River Watershed, the Line 5 Segment Reroute Project (“Project”). The Project would damage over 100 acres of vital wetlands and waterways upstream of the Reservation that keep the waters and ecosystems of the Bad River Watershed clean and functioning. Accordingly, the Band submitted to the Corps hundreds of pages of legal, technical, and scientific documents showing the harms of the Project’s construction, maintenance, and operation on the Band’s environmental and cultural interests in vital wetlands, waterways, aquifers, and resources within and around the Bad River Band’s Reservation.

4. The Corps issued its final Permit (the “Permit,” attached at Exhibit A) and accompanying Environmental Assessment, Clean Water 404(b)(1) Guidelines Evaluation, and Public Interest Review (“Combined Decision Documents”) approving construction of the Project in October 2025 without addressing the tremendous impacts raised by the Band and others. The Corps’ issuance of the Permit violates NEPA and CWA requirements.

5. First, the Corps violated the National Environmental Policy Act by issuing the Permit with insufficient consideration or understanding of the environmental effects of construction, maintenance, and operation of the Project, including but not limited to, an inadequate consideration or understanding of environmental impacts on the access to and health of the Band’s treaty-protected resources in the areas near and within its Reservation. This inadequate review fails to fulfill the Corps’ duties under NEPA to fully review and disclose these impacts.

6. Second, the Corps violated the Clean Water Act by issuing the Permit without ensuring that construction and maintenance of the Project would not adversely affect Wisconsin and the Band’s water quality. This includes issuing a CWA Section 404 permit while the required CWA Section 401 state water quality certification is not yet final, pending state administrative proceedings; without addressing the inadequacies the Band identified with Wisconsin’s Water Quality Certification; or ensuring compliance with the Band’s water quality standards in violation of Section 401 of the CWA.

7. Third, the Corps violated the Clean Water Act by relying on insufficient information on environmental baselines within the area and thus failed to determine whether the Project would avoid or minimize the impacts of construction discharges on affected aquatic ecosystems. This includes, but is not limited to, inadequate understanding of wetland hydrology, vague blasting plans, inadequate mitigation plans, and inadequate mechanisms for wetland

mitigation when issuing the Permit. The failure to require Enbridge to develop adequate construction plans and mitigation plans informed by relevant wetlands and water data violated Section 404 of the CWA.

8. The Corps' decision to approve the Project is arbitrary and capricious and an abuse of discretion in violation of NEPA, CWA, and the APA. Accordingly, the Band brings this complaint for declaratory and injunctive relief and asks this Court to set aside the Corps' Permit and the associated Environmental Assessment ("EA"). The Band asks this Court to declare that Defendants' Section 404 permit violates NEPA, CWA, and the APA; and vacate the Corps' Section 404 Permit and Final EA.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), and 1362 (civil actions brought by federally recognized tribes when the matter in controversy arises under the laws of the United States). The relief sought is authorized by 28 U.S.C. §§ 2201(declaratory relief) and 2202 (injunctive relief), and 5 U.S.C. § 706.

10. Venue in this district is appropriate under 28 U.S.C. § 1391(e)(1) because Federal Defendant U.S. Army Corps of Engineers' headquarters is located in the district.

PARTIES

11. The Bad River Band of Lake Superior Chippewa is a federally recognized Tribal Nation with a government-to-government relationship with the United States. *Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 89 Fed. Reg. 99899 (Dec. 11, 2024). The Band is Ojibwe, one of the three tribes of the Anishinaabe people. The Bad River Band has maintained its way of life amid the shores and forests surrounding and constituting its present-day Reservation for several hundred years. The Ojibwe specifically

revere the wetlands and waterways around the Bad River watershed because this landscape plays a critical role in the Band's traditional migration story. That story tells of the Anishinaabe people moving from the east and stopping at various points along the way, forming distinct Bands and Tribes. The Kakagon and Bad River Sloughs and the Apostle Islands were the final stop on that journey. As described in the migration story, the Band's people would find home in the place "where food grows on water." The Ojibwe found manoomin, or wild rice, growing in the region's waters and settled in the wetland-rich environment of present-day Northern Wisconsin.

12. The Band's leadership secured a permanent reservation homeland in the 1854 treaty with the United States. Treaty with the Chippewa, 10 Stat. 1109 (1854). That treaty created the Band's present-day Reservation, which constitutes much of the subbasin of the Bad River – Mashkiiziibii – for which the Band is named. In addition to their treaty rights to a permanent reservation homeland, the Band and its members retain rights to hunt, fish, gather, and engage in traditional and cultural activities in areas of Northern Wisconsin and Michigan that the Ojibwe ceded to the United States in the 1842 treaty. Treaty with the Chippewa, 7 Stat. 591 (1842).

13. For hundreds of years, and to this day, the Band's ancestors and members have lived, hunted, fished, trapped, gathered, and engaged in traditional activities in the wetlands and waters to be crossed by the Project. The Project would encircle the Reservation on three sides and damage areas the Band highly values for their ecological and cultural significance. The Corps' failure to properly review and address the Project's environmental impacts to wetlands and waterways harms the Band's interest in maintaining its Reservation homeland and resources in the ceded territory.

14. Defendant is the U.S. Army Corps of Engineers, an agency within the executive branch of the federal government. The Corps is the agency responsible for permitting the discharge

of dredged or fill material into navigable waters of the United States under CWA § 404, 33 U.S.C. § 1344. The Corps is responsible for NEPA compliance for its permitting and authorization decisions.

15. By filing this action, the Band does not waive its sovereign immunity and does not consent to suit as to any claim, demand, offset, or cause of action of the United States, its agencies, officers, agents, or any other person or entity in this or any other court.

LEGAL BACKGROUND

I. THE NATIONAL ENVIRONMENTAL POLICY ACT

16. Congress enacted NEPA “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321.

17. “NEPA requires the federal government to identify and assess in advance the likely environmental impact of its proposed actions, including its authorization or permitting of private actions.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 36 (D.C. Cir. 2015). This process ensures that agencies evaluate prospectively the environmental impacts of proposed actions that they carry out, fund, or authorize, and that detailed information concerning significant environmental impacts “will be made available to the larger [public] audience that may [] play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

18. Where an agency determines that its action will “not have a reasonably foreseeable significant effect on the quality of the human environment,” it must still prepare an EA. 42 U.S.C.A. § 4336(b)(2). EAs must “provide sufficient evidence and analysis for determining

whether to prepare [...] a finding of no significant impact,” and include analysis of “the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” *Ctr. for Biological Diversity et al. v. Doug Burgum et al.*, 2025 WL 3152250, at *5 (C.D. Cal. Sept. 24, 2025) (citing 40 C.F.R. § 1508.9(a)(1), (b)).

II. THE CLEAN WATER ACT

19. Congress enacted the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To accomplish this goal, the CWA prohibits the discharge of any pollutant, including dredged spoil or other fill material, into waters of the United States unless authorized by a permit. *Id.* at § 1311(a). Unless statutorily exempt, all discharges of dredged or fill material into waters of the United States must be authorized under a permit issued by the Corps. *Id.* at §§ 1344(a)–(e).

20. The Corps issues individual permits under CWA § 404(a) on a case-by-case basis in accordance with guidelines developed by the Environmental Protection Agency. 33 U.S.C. § 1344(b)(1); 40 C.F.R. part 230. Fundamental to these guidelines, known as the 404(b)(1) Guidelines,

is the precept that dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

40 C.F.R. § 230.1(c). Under the 404(b)(1) Guidelines, a project shall not be permitted if it causes or contributes to violations of any applicable state water quality standard, if it will cause or contribute to significant degradation of the waters of the United States, and it cannot be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts on the aquatic ecosystem. *Id.* at § 230.10(b)–(d).

21. The Corps must also adhere to its own permitting guidelines. 33 C.F.R. Parts 323, 325. The Corps cannot issue a permit until after a thorough review. This review involves, among other things, site-specific documentation and analysis of waters and wetlands and their potential effects, public-interest analysis, and formal determination pursuant to the statutory and regulatory criteria. *See* 33 C.F.R. § 322.3.

A. Section 401

22. The achievement of state water quality standards is a “central objective” of the CWA. *Arkansas v. Oklahoma*, 503 U.S. 91, 106 (1992). Accordingly, Section 401 empowers States and Tribes treated as states to set water quality standards and issue ultimate determinations of whether discharges within their boundaries comply with such standards. 33 U.S.C. § 1313; 1341(a)(1)-(2).

23. Before issuing a Section 404 permit, a permit applicant must provide the permitting agency, in this case the Corps, with a Section 401 certification from the State or Tribe in which the discharge originates that “any such discharge will comply” with that State or Tribe’s water quality standards. *Id.* at § 1341. The Corps can also issue a Section 404 permit in compliance with Section 401 if the affected State or Tribe waives the certification requirement. *Id.*

24. Where a State or Tribe denies a Section 401 water quality certification, the Corps may not issue a Section 404 permit. *Id.*

25. Section 401 also empowers States and Tribes treated as states to object to discharges which originate in nearby jurisdictions but will affect water quality within the neighboring State’s or Tribe’s boundaries. 33 U.S.C. § 1341(a)(2). Section 401(a)(2) provides a process whereby neighboring jurisdictions can object to projects that a federal agency finds may impact their water quality, including requesting the permitting agency to hold a public hearing. *Id.*

26. To conclude the process, the permitting agency “shall condition the license or permit in such a manner as may be necessary to insure compliance with applicable water quality requirements.” 33 U.S.C. § 1341(a)(2). “If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.” *Id.*

III. ADMINISTRATIVE PROCEDURE ACT

27. The APA confers a right of judicial review on any person who is adversely affected by agency action. 5 U.S.C. § 702.

28. The APA provides that the reviewing court “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* at § 706(2)(A).

29. Under the APA, a court shall also “hold unlawful and set aside” any agency action that was promulgated “without observance of procedure required by law.” *Id.* at § 706(2)(D).

30. An agency’s compliance with NEPA and CWA requirements is reviewed for arbitrary and capricious action, abuse of discretion, or failure to comply with the law under the APA’s standard. *Id.* at § 706(2)(A).

STATEMENT OF FACTS

I. THE BAND AND ITS HOMELAND

31. The Band’s reserved homeland includes the Band’s Reservation on Madeline Island and the southern shore of Lake Superior amid sensitive, high-quality wetlands in the Bad River subbasin, and the surrounding territory in which the Band retains rights to occupy, fish, hunt, trap, and gather.

32. The Band’s Reservation is home to numerous natural, cultural and spiritual resources. These resources are found amid wetlands and waterways connected to the Reservation and Lake Superior. The Kakagon and Bad River Sloughs rest on the north side of the Reservation

and are a vast unique coastal wetland habitat designated as a Ramsar Site on the List of Wetlands of International Importance. The Kakagon and Bad River Sloughs support the largest natural wild rice bed on the Great Lakes, which Bad River Band members have been harvesting for generations. The health of the Kakagon and Bad River Sloughs depends on the health of the waters that flow into them, including upstream waters and waters from the Chequamegon Bay Area of Lake Superior.

33. The landscape within the Band's ceded territory also holds sites of cultural and historical significance. The Band and its members place significant importance on the preservation of their cultural heritage, lifeways, and traditional activities tied to the land and water of their homeland. Destruction or damage to any one cultural resource, site, or landscape contributes to the destruction of the Band's culture, history, and traditional and spiritual activities. Injury to the Band's cultural resources causes injury to the Band and its members.

34. The Band also has a cultural and religious interest in protecting and preserving the quality of the land, water, air, fauna, and flora within the Band's ancestral lands, both within the Reservation and the ceded territory outside the Reservation's borders. The cultural, religious, and traditional practices of the Band and its members are tied to the ways that Band members hunt, fish, trap, gather, and harvest throughout the Band's ancestral lands. The cultural, religious, and traditional practices of the Band and its members are also tied to the numerous locations where Band members have exercised those practices throughout the ceded territories, in many cases for generations.

35. The Band's ancestral territory, including the Reservation and ceded territory, sits in a hydrologically complex watershed. The region has numerous groundwater aquifers and artesian wells that sit below the ground's surface. There are hundreds of rivers, streams, and

wetlands that create a complex surface water system throughout the region. This complex watershed is replete with interactions between groundwater and surface water, including springs and seeps where groundwater reaches the surface, and areas of groundwater recharge where surface water is absorbed into the groundwater. The wetlands in the region share these complex surface water and groundwater interactions and also serve unique ecological functions within the watershed.

36. The Band's cultural worldview of water resources in its ancestral territory reflects the hydrological reality of the watershed—that the water is connected and that waters upstream of the Reservation will flow downstream and eventually out to Lake Superior.

37. The Bad River Band has an established interest in protecting and preserving the resources within the Reservation, including waters within the Reservation boundaries. The Band has treatment in a similar manner to a state ("TAS") status under the Clean Water Act and has EPA-approved water quality standards. 33 U.S.C. § 1377(e) (TAS authorization); 33 U.S.C. § 1313 (state water quality program). EPA approved the Band's TAS status for CWA Sections 303(c) and 401 in 2009 and the Band's water quality standards in 2011. The Band has been operating a water quality standards program for waters within the Bad River Reservation boundaries since that time.

38. The Band's water quality standards establish designated uses and include narrative and numeric criteria to protect those designated uses. The Band's designated uses can be, and are, more protective than the state of Wisconsin's water quality standards. The Band has designated uses for many waters within the Band's Reservation, including uses for cultural, ceremonial, and subsistence activities which are not covered by Wisconsin's water quality standards. The Band also has an antidegradation policy established to protect high-quality waters and their uses.

39. The Band takes a watershed approach to water resource stewardship within the Reservation, which includes monitoring and implementing projects in areas outside the Band's Reservation that may impact the Band's water resources. This approach acknowledges that water resources within the region do not begin or end at the Reservation boundary but are part of a larger hydrologically complex system.

II. ENBRIDGE LINE 5 PIPELINE

40. Enbridge owns and operates Line 5, a 645-mile pipeline that transports approximately 540,000 barrels per day ("bpd") of petroleum products, including 460,000 bpd of crude oil and 80,000 bpd of natural gas liquids ("NGLs") from Superior, Wisconsin, to Sarnia, Ontario, Canada. Line 5 runs through northern Wisconsin, the Bad River Reservation, and the Upper and Lower Peninsulas of Michigan before entering Canada. The Lakehead Pipeline Company ("Lakehead"), Enbridge's predecessor, built Line 5 in 1953.

41. Line 5 currently crosses approximately twelve miles of the Band's Reservation. Historically, Lakehead and Enbridge operated Line 5 on the Reservation pursuant to easements the Bureau of Indian Affairs initially issued without the Band's consent.

42. Several of Enbridge's easements to operate on the Reservation expired in 2013. The Band did not provide consent for the renewal of Band-controlled easements due to concerns over oil spills and pollution, and to preserve the health, subsistence, culture, and ecosystems on which its members rely. Despite the expiration of these easements, Enbridge continues to operate the pipeline across the Reservation.

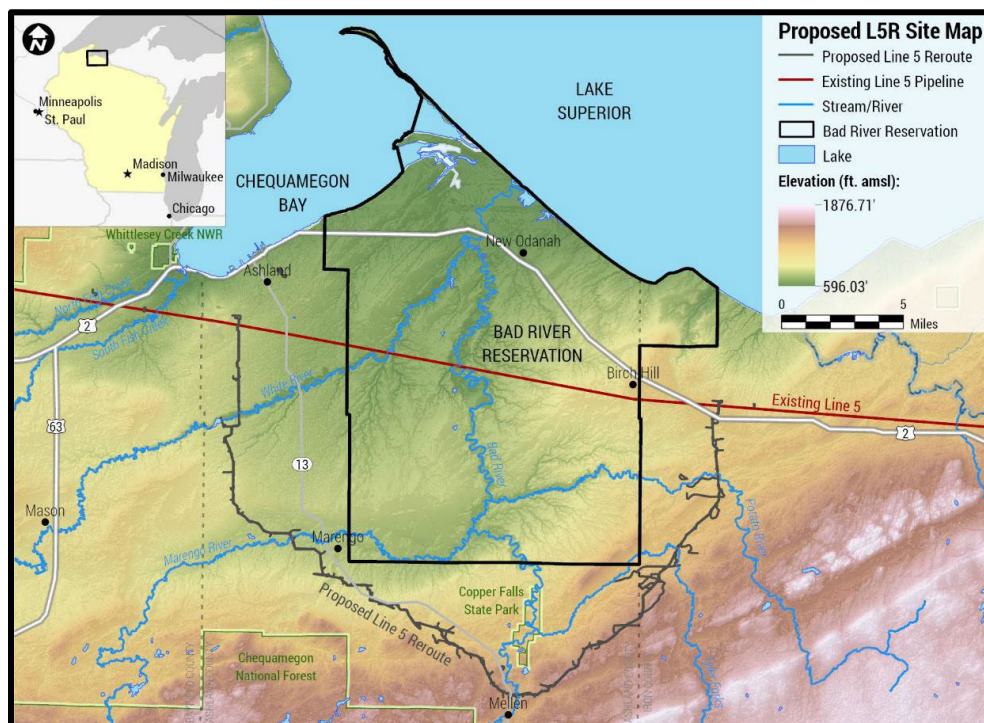
43. The Band filed an action in federal court against Enbridge in 2019 seeking an order to remove the pipeline from the Reservation. On September 7, 2022, the United States District Court for the Western District of Wisconsin ruled in favor of the Band and found that Enbridge was operating Line 5 in illegal trespass. *Bad River Band of Lake Superior Tribe of Chippewa*

Indians of Bad River Rsrv. v. Enbridge Energy Co., Inc., 626 F. Supp. 3d 1030 (W.D. Wis. 2022).

On June 16, 2023, the court ordered Enbridge to cease operating the twelve-mile segment across the Reservation by June 16, 2026, among other remedies. *Bad River Band of Lake Superior Tribe of Chippewa Indians of Bad River Rsrv. v. Enbridge Energy Co., Inc.*, No. 19-CV-602-WMC, 2023 WL 4043961, at *1 (W.D. Wis. June 16, 2023). Enbridge and the Band appealed the decision to the United States Court of Appeals for the Seventh Circuit. The case is pending.

III. ENBRIDGE'S PROPOSED LINE 5 REROUTE PROJECT

44. On February 10, 2020, Enbridge applied to the Corps seeking permits to construct a forty-one-mile pipeline to reroute a portion of Line 5 around and directly upstream of the Band's Reservation. Although the Project is outside of the borders of the Reservation, it is still located within the Band's ceded territory. The Project would surround the Reservation on three sides and cross over a hundred wetlands and waterways that are hydrologically connected to the Band's Reservation waters. The Project would also cross through Iron County Forest land, which is public land where Band members exercise treaty-protected rights to hunt, fish, and gather.



45. In its permit application, Enbridge proposed to directly alter at least 101.1 acres of wetland and 186 waterways to build the Project, resulting in impacts to thousands of acres of hydrologically connected wetlands. These rich aquatic areas support habitat for numerous plants and wildlife. All of the waters that the Project would cross are directly connected to Lake Superior and the Kakagon and Bad River Sloughs.

46. Enbridge proposes to use three methods to construct the Project: trenching, blasting, and Horizontal Direction Drill (“HDD”)/Direct Bore. Each construction method will damage and impact water resources along the proposed route. Trenching involves digging directly into the ground, wetland, or waterway to place the pipeline, then burying it. Approximately seventy waterways would be trenched during construction. In areas where bedrock is present, or trenching is not feasible, Enbridge proposes to place explosives in the rock and detonate them to excavate the material. Blasting is proposed for at least seven miles along the construction route. Construction via HDD and direct bore involves drilling, boring, and stringing pipe through a borehole and going deep underground for some distance before resurfacing through another borehole. Enbridge proposes HDD construction for thirteen crossings, including one direct-bore crossing, with the longest crossing measuring almost one mile in length.

47. All of Enbridge’s proposed construction methods would require clearing of the lands and waters surrounding the pipeline’s route, including grading and cutting back bushes, trees, or other flora and fauna in the construction workspace. Clearing will occur in adjacent wetlands to accommodate equipment, soil stockpiling, and other activities. Construction areas will also need to be stabilized, which could include grading or the placement of matting throughout the area to support equipment. Clearing of additional areas to facilitate construction would alter wetlands, waterways, and water flows, as well as alter the flora and fauna that those areas support.

48. After construction is complete, Enbridge proposes to maintain a permanently cleared right-of-way along the route of the pipeline. This right-of-way would create a fifty-foot corridor along all forty-one miles of the Project's proposed route that would be permanently cleared of trees, large bushes, or other flora or fauna that impairs visual inspection of the pipeline corridor. This right-of-way would permanently alter the landscape, the wetlands, and other water resources. It would create a path through large areas of land within ceded territory that are otherwise undeveloped, fragmenting the forest and creating a cleared perimeter around three sides of the Band's Reservation.

49. In January 2022, the Corps published a Public Notice on Enbridge's permit application for the Project. The Band submitted comments on the draft application in March 2022. In that comment letter, the Band identified numerous deficiencies in the Corps' Public Notice and Enbridge's permit application materials, including a failure to adequately identify the geographical scope of the Project and a lack of data regarding the Project's impacts. The Band also alerted the Corps to the existence and impact of a Wisconsin state law that allows for a person entering a pipeline right-of-way to be prosecuted for a felony. *See* Wis. Stat. § 943.143. The existence of this law means Band members can be criminally prosecuted for accessing treaty-protected resources within ceded territory, which will have a direct effect on the Band and its members. The Band nevertheless prepared the comment letter and its attachments based on the limited information available in the Public Notice and application materials.

50. In May 2024, the Corps issued a Draft Environmental Assessment, Clean Water Act Section 404(b)(1) Guidelines Evaluation, and Public Interest Review, which it called the Draft Combined Decision Document ("DCDD"), laying out the Corps' draft analysis of Enbridge's application.

51. In August 2024, the Band submitted comments on the DCDD. The Band reiterated the concerns it raised in response to the Corps' 2022 Public Notice, including a lack of data for environmental baselines on wetlands, waterways, and connected waters and a failure to evaluate the full scope of environmental impacts from the proposed Project's construction, maintenance, and operation. The Band, in its comment letter and hundreds of pages of technical attachments, raised numerous issues with the Corps' DCDD, including, but not limited to, failure to assess key impacts on the access to and health of treaty-protected resources and the failure to avoid, minimize, and mitigate impacts to affected wetlands. The Band also raised issues with the Corps' failure to assess the impacts of construction, maintenance, and operation of the Project on the Band's water quality standards, including but not limited to, the failure to evaluate the current conditions of waters the Project will affect, including waters where designated uses are already impaired.

52. On November 14, 2024, the Wisconsin Department of Natural Resources ("WDNR") issued a Section 401 Water Quality Certification ("WQC") for the Project, a state wetland and waterway permit, and a state certification of coverage for construction stormwater discharge to Enbridge. In December 2024, the Band filed a petition for administrative review of the state approvals through a contested case hearing.¹ WDNR granted the request for a contested case and referred nine issues to an administrative law judge ("ALJ") in Wisconsin's Division of Hearing and Appeals for a contested case proceeding ("State Contested Case"). The Band challenged the state permits because they did not meet state wetland and waterways permitting standards, mitigation requirements, or stormwater construction requirements. The Band also argued the state WQC did not provide reasonable assurance of meeting state water quality

¹ At the same time, the Band petitioned for judicial review in state court, and that case is stayed pending resolution of the State Contested Case.

standards. Prior to commencing the hearing, the ALJ maintained a stay as to all activities authorized by the state approvals until the conclusion of the State Contested Case. At the time of this filing, the State Contested Case is pending.

53. The WDNR issuance of the state WQC in November 2024 started the Section 401(a)(2) process under the Clean Water Act. On December 13, 2024, the Environmental Protection Agency (“EPA”) notified the Band, as a neighboring jurisdiction, that the Project may affect the quality of the Band’s waters. On February 11, 2025, the Band notified EPA and the Corps that the Project will affect the quality of the Band’s waters and objected to permitting the proposed Project with substantial documentation on the proposed Project’s impacts to the Band’s waters. The Band also requested the Corps hold a Section 401(a)(2) public hearing on the Band’s objections. The Corps held a hearing in May 2025, where the Band presented testimony and evidence on impacts of the Project’s construction to water quality within the Band’s Reservation. As part of the public comment period following the hearing, the Band submitted further legal, technical, and scientific evidence demonstrating how construction of the Project would violate the Band’s water quality standards. The violations include impairing designated uses of Reservation waters, exceeding narrative and numeric water quality criteria derived to protect those designated uses, and violating the Band’s antidegradation policy established to protect high-quality waters and their uses.

IV. THE CORPS’ ISSUANCE OF THE PERMIT

54. On October 29, 2025, the Corps issued its final Section 404 permit (“Permit”), along with a combined Environmental Assessment, Clean Water Act Section 404(b)(1) Guidelines Evaluation, and Public Interest Review (“Combined Decision Document” or “CDD”). The CDD included a list of Findings and Determinations, including a Finding of No Significant Impact, Compliance with the Section 404(b)(1) Guidelines, a Public Interest Determination, and a Section

401(a)(2) Determination. In its CDD, the Corps concluded that the Project would “not have a significant impact on the quality of the human environment” and that an Environmental Impact Statement would not be required under NEPA. The Corps also concluded that the proposed discharges would “not affect the quality of the Bad River Band’s waters [in violation of] their water quality requirements” under Section 401(a)(2) of the Clean Water Act and that the proposed discharges comply with the Section 404(b)(1) Guidelines under the Clean Water Act.

55. The Corps did not address the legal deficiencies cited by the Band when issuing the Permit and CDD. For example, the CDD failed to consider the impacts of the construction of the Project on Band members’ abilities to access the ceded territory outside the Band’s Reservation. While the CDD acknowledged that the construction of the Project would restrict Band members’ access to lands and resources in ceded territory, it neither evaluated nor sought to mitigate these impacts, categorizing them as outside the Corps’ authority to influence or control.

56. The CDD also did not adequately assess the risk and effects of potential oil spills resulting from the operation of the Project. The Corps instead disclaimed responsibility for reviewing the impacts of oil spills, stating they were outside the Corps’ scope of review. Instead of conducting an independent analysis of the impacts of a potential oil spill, the Corps reattached to the CDD the same Enbridge oil spill report that the Corps published with its DCDD. Notably, the Corps reattached Enbridge’s oil spill report without addressing any of the issues that the Band already raised with this report prior to the issuance of the Permit—including the failure by Enbridge to include an elevation profile in its assessment; model the transport of Natural Gas Liquids; assess lethal and non-lethal impacts to fish and other water-based species; and evaluate response mechanisms to an oil spill based on realistic response assumptions.

57. The CDD did not adequately assess the impacts of blasting as a construction method or seek to mitigate those impacts. Though the CDD and Permit recognized that approximately seven miles along the Project are proposed for blasting, the Corps did not assess any site-specific data to evaluate impacts of blasting on blast sites themselves or sites where waste materials from blasting would be disposed, and instead gave Enbridge the discretion to prepare a site-specific blast plan for each blast activity only five days before conducting such blasting activity.

58. The CDD arbitrarily dismissed significant impacts of construction, maintenance, and operation of the Project, largely characterizing impacts as temporary. For example, the Corps arbitrarily dismissed impacts related to the fragmentation of forested and wetland areas. The Corps arbitrarily characterized these impacts as temporary and failed to engage with submissions by the Band and others showing that forest fragmentation caused by construction of the Project will lead to an increase in runoff, erosion, and invasive species, among other impacts, and will have long-term effects on existing flora and fauna, some of which will be forever altered. The Corps similarly brushed over impacts from Enbridge's proposed construction methods to aquatic ecosystems, without assessing them using the best available wetlands and waters data provided by the Band and without adequately assessing Enbridge's plans to mitigate impacts from construction of the Project.

59. The Corps arbitrarily concluded that Wisconsin's WQC would be sufficient, without any further conditions, to protect the Band's waters. The Corps reached this conclusion without any discussion of the fact that Wisconsin's WQC is currently not final and is at issue in the State Contested Case. The Corps also arbitrarily dismissed the Band's objections to Wisconsin's WQC by merely repeating the evaluation that the EPA presented at the Section 401(a)(2) public hearing without any further or independent evaluation of the materials the Band

submitted as part of the hearing process, which the EPA did not evaluate. The Corps did not assess the Band's materials related to designated uses of Reservation waters, narrative and numeric water quality criteria derived to protect those designated uses, and the Band's antidegradation policy prior to issuing the Permit and CDD.

FIRST CLAIM FOR RELIEF

Violation of the National Environmental Policy Act and Administrative Procedure Act: Failure to Adequately Consider Impacts

60. The Band reincorporates the allegations in all preceding paragraphs.

61. NEPA requires the Corps to take a hard look at the relevant environmental impacts of a proposed action and disclose its evaluation of these impacts. When issuing a Section 404 dredge and fill permit, the relevant environmental impacts to be considered include not just the effects of the discharge of dredged or fill material in jurisdictional waters but also the foreseeable nonaquatic effects of the installations that the Corps' dredge and fill permits authorize.

62. Only if the Corps reasonably determines, based on a legally sufficient EA, that an action will not have significant environmental impacts may the agency issue a finding of no significant impact ("FONSI") and terminate the NEPA process. This requirement mandates that the Corps evaluate relevant information, existing data, and plans before issuing a final permit.

63. Here, the Corps' FONSI and Final EA within its CDD failed to take a hard look at the impacts of construction, maintenance, and operation of the Project on surface waters, groundwater, fish, wildlife, waterfowl, wild rice, plants, and other species dependent on a healthy ecosystem.

64. The Corps failed to evaluate how construction of the Project will impact the Band's members' ability to exercise treaty-protected rights to hunt, fish, trap, and gather in ceded territory, where Wisconsin law enforcement officers can prosecute the Band's members for traversing

across the Project's right-of-way. The Corps did not assess the impacts on the exercise of these rights, let alone provide any mitigation of these impacts.

65. The Corps failed to evaluate the risks and impacts of oil spills along the pipeline route. These failures include, but are not limited to, failing to assess the relevant elevation profile; failing to model the transport of Natural Gas Liquids; failing to assess impacts to fish and other water-based species; and failing to evaluate response mechanisms to an oil spill based on realistic response times.

66. The Corps failed to evaluate the risks and impacts of blasting as a construction method identified by the Band and others. The Corps' Permit and CDD recognized that at least seven miles along the Project's proposed route may be subject to blasting, but approved Enbridge's general blast plan without evaluating site-specific geotechnical data, disposal sites, or potential explosive types.

67. The Corps failed to fully assess the impacts that construction, including creation of a forest edge, would have on the Band's treaty rights, which the Band holds in its Reservation lands and in off-Reservation ceded territory that the Project would cross or otherwise impact.

68. The Corps' failure to consider the impacts of the Project violates NEPA and is arbitrary, capricious, and not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

Violation of the Clean Water Act and the Administrative Procedure Act: Failure to Comply with Wisconsin and Band Water Quality Requirements

69. The Band reincorporates the allegations in all preceding paragraphs.

70. The CWA prohibits the issuance of any federal license or permit over the objection of an affected State unless compliance with the affected State's water quality requirements can be ensured. 33 U.S.C. § 1341(a).

71. The Corps violated the CWA because it issued the Permit without ensuring construction of the Project will comply with the Band's water quality standards. Instead, the Corps concluded that the discharges from the Project would not violate Wisconsin's WQC, which does not address all the Band's water quality standards. The Permit and CDD failed to engage with the substance of the Band's water quality standards and address the failures of Wisconsin's WQC to protect the Band's waters and comply with the Band's water quality standards.

72. The Corps also violated the CWA by issuing this Permit while Wisconsin's WQC is not yet final, pending resolution of the State Contested Case. A final water quality certification from Wisconsin was necessary before the Corps issued its permit decision. The Corps' issuance of the Permit based on a non-final and insufficient water quality certification violates the CWA and is arbitrary, capricious, and not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF

Violation of the Clean Water Act and the Administrative Procedure Act: Failure to Evaluate All Relevant Factors, Including Cumulative Impacts, and to Avoid, Minimize, and Mitigate the Project's Impacts

73. The Band reincorporates the allegations in all preceding paragraphs.

74. The Corps cannot issue a permit under the CWA unless it complies with its Section 404(b)(1) Guidelines. 33 U.S.C. § 1344(b)(1); 40 C.F.R. part 230. Under the guidelines, the Corps may not issue the Permit if it determines that (i) there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem; (ii) the proposed discharge will result in significant degradation of the aquatic ecosystem under 40 C.F.R. § 230.10(b) or (c);

(iii) the proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or (iv) there does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines. 40 C.F.R. § 230.12(a)(3)(i-iv).

75. Where no less damaging, practicable alternative to an applicant's proposed route is available, the applicant must show that all "appropriate and practicable steps" will be taken to "minimize potential adverse impacts of the discharge on the aquatic ecosystem." *Id.* at § 230.10(d).

76. The Corps violated the CWA by issuing the Permit without sufficient information to make a reasonable judgment as to whether the Project's discharges will comply with the 404(b)(1) Guidelines, including by issuing the Permit without evaluating the current conditions of waters the Project will affect, and based on incomplete and inadequate wetland data and construction plans.

77. The Corps violated the CWA by approving the Project, which will significantly degrade the aquatic ecosystems through proposed construction methods, including by impacting wetlands, waterways, and species through vegetation clearing and placement of matting, trenching, blasting, HDD, and other construction methods.

78. The Corps violated the CWA by failing to ensure appropriate and practicable measures to minimize harms of the Project, including by relying upon an inadequate construction mitigation plan to minimize the harms of the Project.

79. The Corps' issuance of the Permit, without adequately ensuring avoidance, minimization, and mitigation of the Project's impacts, violates the CWA and is arbitrary, capricious, and not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

Based on the foregoing, the Band requests that the Court:

- A. Declare that the Corps acted in violation of the National Environmental Policy Act, arbitrarily and capriciously, and in abuse of its discretion by failing to adequately assess the impacts of construction, maintenance, and operation of the Project.
- B. Declare that the Corps acted in violation of the Clean Water Act, arbitrarily and capriciously, and in abuse of its discretion by issuing a Permit based on a non-final and insufficient water quality certification.
- C. Declare that the Corps acted in violation of the Clean Water Act, arbitrarily and capriciously, and in abuse of its discretion by failing to adequately avoid, minimize, and mitigate the Project's impacts.
- D. Vacate the Permit and Final Environmental Assessment.
- E. Award the Band reasonable fees, expenses, and costs, including attorneys' fees as determined appropriate; and
- F. Grant the Band such other and further relief as the Court deems just and equitable.

Respectfully submitted this 16th day of December 2025.

/s/ Joseph V. Langkilde

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***Application for Pro Hac Vice Forthcoming*