



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
WW-16J

Col. Karl Jansen
District Commander
U.S. Army Corps of Engineers
St. Paul District, Regulatory Branch
180 Fifth Street East, Suite 700
Saint Paul, MN 55101-1678

Re: Public Notice MVP-2020-00260-WMS / Enbridge Line 5 Wisconsin Segment Relocation

Dear Colonel Jansen:

This letter is in reference to Public Notice No. MVP-2020-00260-WMS, issued on January 6, 2022, and the associated Clean Water Act (CWA) Section 404 permit application (Application). The applicant, Enbridge Energy, Limited Partnership (Enbridge), proposes the permanent discharge of fill material into 0.02 acres of waters of the United States (WOTUS), and temporary discharges of dredged or fill material into 101.08 acres of wetlands and 0.20 acres of non-wetland WOTUS associated with the construction of the Enbridge Line 5 Wisconsin segment relocation (WILSR) project. Enbridge plans to construct 72 pipeline crossings through federally jurisdictional waterbodies (including rivers, streams, and ditches) and impact 534 individual wetland areas along the proposed route. The proposed WILSR project would begin near the intersection of State Highway 137 and State Highway 112 in Ashland County, Wisconsin and extend to approximately the intersection of US Highway 2 and State Highway 169 in Iron County, Wisconsin.

On March 16, 2022, the U.S. Environmental Protection Agency Region 5 (EPA Region 5) sent the St. Paul District-U.S. Army Corps of Engineers (Corps) a comment letter in response to the Public Notice and the associated Application. In our letter, we identified concerns with respect to the proposed project's compliance with the CWA Section 404(b)(1) Guidelines (Guidelines) set forth at 40 CFR Part 230. The letter stated that at present, EPA does not believe there is sufficient information to conclude that the proposed project is the least environmentally damaging practicable alternative (LEDPA), that the project would not result in violation of water quality standards or significant degradation of aquatic resources, or that the project would appropriately mitigate for unavoidable impacts to WOTUS. To address these concerns regarding compliance with the Guidelines, EPA provided detailed comments and recommendations in our March 16th letter that focused on further avoidance and minimization of pipeline construction related discharges to WOTUS, recommendations to address water quality and significant degradation concerns, and options for improving mitigation for unavoidable impacts (see enclosed letter). In those comments, EPA also stated that the proposed project "may result in substantial and unacceptable impacts" to the Bad River and the Kakagon-Bad River Sloughs

wetland complex, which EPA has identified as aquatic resources of national importance (ARNIs).

Since EPA's letter of March 16, EPA Region 5 and the Corps have held virtual meetings on April 4 and April 11, to discuss EPA comments and recommendations. Pursuant to the Memorandum of Agreement between EPA and Department of the Army regarding CWA Section 404(q) (MOA), "within 25 calendar days after the end of the basic or extended comment period the Regional Administrator must notify the District Engineer by letter that in the EPA's opinion, the discharge **will** have a substantial and unacceptable impact on an aquatic resource of national importance." (MOA at Part IV, paragraph 3(b)). While EPA Region 5 and the Corps are diligently working together towards resolution of EPA's comments and recommendations, at this time, EPA has not received sufficient information from the Corps or Enbridge to fully address our concerns and recommendations within the timeframe identified in the MOA. As a result, consistent with the provisions of the MOA between EPA and Department of the Army at Part IV paragraph 3(b), EPA notifies you that we believe the project, as currently proposed, "**will** result in substantial and unacceptable adverse impacts" on the Bad River and the Kakagon-Bad River Sloughs wetland complex.

EPA remains committed to continuing to work diligently through the collaborative process described by our MOA to address identified concerns and recommendations. Thank you for the opportunity to comment on the project. Should you have any questions, please do not hesitate to contact Melissa Blankenship of my staff by phone at (312) 886-9641 or by email at blankenship.melissa@epa.gov.

Sincerely,

**DEBRA
SHORE**

Digitally signed by
DEBRA SHORE
Date: 2022.04.14
09:53:07 -05'00'

Debra Shore
Regional Administrator
& Great Lakes National Program Manager
US EPA Region 5

Enclosures

e-cc: Chad Konickson, Regulatory Branch Chief-St. Paul District
Rebecca Graser, Deputy Division Chief-St. Paul District
Bill Sande, Project Manager-St. Paul District
Ben Callan, Chief-Integration Services Section, Wisconsin DNR
Catherine Chavers, Chairwoman-Bois Forte Band of Chippewa
Kevin Dupuis, Chairman-Fond du Lac Band of Chippewa
Robert Deschampe, Chairman-Grand Portage Band of Chippewa
Faron Jackson, Sr., Chairman-Leech Lake Band of Ojibwe
Robert L. Larsen, President-Lower Sioux Indian Community
Melanie Benjamin, Chief Executive Officer-Mille Lacs Band of Ojibwe
Catherine Chavers, President-Minnesota Chippewa Tribe
Johnny Johnson, President-Prairie Island Indian Community

Darrell Seki, Sr., Chairman-Red Lake Band of Chippewa
Keith B. Anderson, Chairman-Shakopee Mdewakanton Sioux Community
Sara Dobesh, Coordinator- Shakopee Mdewakanton Sioux Community
Kevin Jensvold, Chairman-Upper Sioux Indian Community
Michael Fairbanks, Chairman-White Earth Band of Chippewa
Michael Wiggins, Chairman-Bad River Band of Lake Superior Chippewa
Ned Daniels, Jr., Chairman-Forest County Potawatomi Community
Marlon WhiteEagle, President-Ho-Chunk Nation
Louis Taylor, Sr., Chairman-Lac Courte Oreilles Band of Lake Superior Chippewa
John Johnson, President-Lac du Flambeau Band of Lake Superior Chippewa
Ronald Corn, Sr., Chairman-Menominee Indian Tribe of Wisconsin
Tehassi Hill, Jr., Chairman-Oneida Nation of Wisconsin
Christopher Boyd, Chairman-Red Cliff Band of Lake Superior Chippewa
Robert VanZile, Chairman-Sokaogon Chippewa Community
William Reynolds, Chairman-St. Croix Chippewa Indians of Wisconsin
Shannon Holsey, President-Stockbridge-Munsee Community
Whitney Gravelle, Chairwoman-Bay Mills Indian Community
David M. Arroyo, Chairman-Grand Traverse Band of Ottawa and Chippewa Indians
Kenneth Meshigaud, Chairman-Hannahville Indian Community
John L. Lufkins, Executive Director-Inter-Tribal Council of Michigan
James Williams, Chairman-Lac Vieux Desert Band of Lake Superior Chippewa
Larry Romanelli, Ogema-Little River Band of Ottawa Indians
Regina Gasco-Bentley, Chairwoman-Little Traverse Bay Bands of Odawa Indians
Bob Peters, Chairman-Match-E-Be-Nash-She-Wish (Gun Lake) Band of Pottawatomi
Jamie Stuck, Chairman-Nottawaseppi Huron Band of the Potawatomi
Rebecca Richards, Chairwoman-Pokagon Band of Potawatomi
Theresa Jackson, Chief-Saginaw Chippewa Indian Tribe
Aaron A. Payment, Chairman-Sault Ste. Marie Tribe of Chippewa Indians