

October 24, 2021

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Ms. Salawater,

The League of Women Voters of Ashland and Bayfield Counties (LWV-ABC) thanks you once again for this opportunity to comment on the Clean Water Act, Section 401 Certification and antidegradation decisions facing the Tribe. We recognize the project proposed by Enbridge Energy as being identical to the project proposed in the spring of 2021 and would like to reiterate our comments (dated March 28, 2021). We also note that this repeated permit request by Enbridge Energy seems like harassment and appears designed to waste the time and resources of the Mashkiizibii Natural Resources Department.

We have many concerns about the impacts of Enbridge's proposed project to armor a channel with filter aggregate and riprap and to permanently fill an area of floodplain forested wetland. The project is proposed in the floodplain forest where the Bad River (Mashkiizibii) makes a tight meander. The negative impacts of fill and riprap within the riparian zone as well as the effects associated with the project (such as construction of stairs and floating docks and the use of amphibious vehicles) must be considered carefully.

We recognize the cultural importance of Mashkiizibii to the Tribe and the designation of the River as an Outstanding Tribal Resource Water. Such designation allows no new or increased discharges or alterations of the background conditions, with exceptions as specified. The floodplain forested wetlands in the project area are designated as Exceptional Resource Waters, which also require strict adherence to anti-degradation criteria. We recognize the Tribe's authority to issue or deny permits for temporary degradation under Section 401 of the Clean Water Act (CWA).

Our concerns include:

- The potential for destruction of wood turtle (*Glyptemys insculpta*, a State Threatened species) habitat. Riprap impedes movements of reptiles and amphibians, and can even trap and kill them.
- Destruction of 0.32 acres of forested floodplain wetland, which is an uncommon habitat type in northern Wisconsin.

- The export and intensification of flood waters downstream, especially during extreme rain events, with all of the concomitant damage to river banks and water quality. The increased frequency and intensity of extreme storm events in the area is widely recognized. Anecdotal and published reports have documented the impermanence of riprap – even large boulders – during extreme flooding events.
- Compaction and disruption of soil during the project construction.
- Discharge of fill material, stormwater, fuel, or other chemicals associated with the riprap construction into the Bad River and floodplain wetlands.
- The effects of construction and installation of a floating dock, construction matting, and a set of stairs on the steep incline to the west of the project area. Such activities could adversely affect wetlands, seeps, and other sensitive habitats. While the structures are intended to be temporary, as is the fill in 1.57 acres of wetlands for the placement of construction mats, the damage would be long-lasting. Restoration of floodplain forest is difficult, if not impossible.
- Clearing of vegetation in the project area and staging and work areas, including large, old trees.

If the Bad River Tribe allows Enbridge to proceed with their riprap project, we strongly urge the Tribe to demand the following of Enbridge, at a minimum:

- Adhere to the Wisconsin Department of Natural Resources' guidance specific to wood turtles (Wood Turtle (*Glyptemys insculpta*) Species Guidance: identification, life history, project screening, avoidance measures, and more.) including:
 - filling voids in exposed rock above OHWM with soil and seeding with native plant species or gravel of appropriate size such that hatchling turtles do not become trapped between rocks;
 - timing of the project to occur during winter snow cover;
 - minimizing work in upland foraging areas according to seasonal and disturbance distance guidance.
- Prohibit disturbance of potential nesting and over-wintering hibernation habitat of wood turtles at all times of the year.
- Disclose all chemical products used in machinery and contained in fill materials. Include a detailed plan for containment and clean-up of any spill. Include Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheets or MSDSs) for all chemical products.
- Conduct post-construction monitoring of project area and potential downstream impacts due to increased velocity of flood waters.
- Avoid forested seep communities and wetlands in the access to and transport of fill and riprap materials to the project site.

We recognize the limited value of riprap in particular circumstances, for example to protect bridges or valuable agricultural land where land use changes have already profoundly affected the natural landscape. In the present case, however, the landscape is undeveloped and the only infrastructure is Enbridge's Line 5 pipeline, which should be decommissioned and removed. At issue is Enbridge's continued attempts to manipulate the flow of Mashkiizibii where the pipeline should not be.

Enbridge is in trespass on the Reservation; their easements have expired. The Bad River Band has made it abundantly clear that their desired outcome is decommissioning and ultimately, the removal of Line 5 from Reservation lands. The LWV-ABC supports the Tribe in this demand.

The resolution passed by the LWV-ABC and the comments we submitted to the Wisconsin Department of Natural Resources regarding the scoping for an Environmental Impact Statement are relevant to this

proposal by Enbridge within Bad River Reservation borders. Please see our resolution at <https://www.lwvabcwi.org/issues-advocacy> and our full set of comments at <https://www.lwvabcwi.org/latest-news/2020/9/14/lwvwi-comments-to-the-dnr-on-the-enbridge-line-5-environmental-impact-statement-and-waterways-permitting-process>.

The League of Women Voters of Ashland and Bayfield Counties continues to advocate for the decommissioning and removal of Enbridge Line 5 as the ultimate solution to the threats posed by the antiquated line. As long as Line 5 continues to operate, maintenance requirements are ongoing (including helicopter flights and integrity digs) and the threat of a spill remains. As long as Line 5 continues to operate, the Bad River Watershed, and ultimately the rice beds of the Kakagon and Bad River Sloughs and Lake Superior itself, remains under threat of a catastrophic spill. As long as Line 5 continues to operate, all of the up-watershed effects we have previously documented threaten the integrity of the entire watershed.

The League of Women Voters of Ashland and Bayfield Counties supports the Tribe in its determination to enforce antidegradation policies as described in its Water Quality Standards. We understand the difficult position the Tribe is in. If our concerns cannot be addressed adequately, then we recommend denying the permit. Should the Bad River Band decide to permit the activities proposed by Enbridge, we hope you will take our concerns under serious consideration. Post-construction monitoring and holding Enbridge to account is extremely important.

Sincerely,



Sue Niemi

President

League of Women Voters of Ashland and Bayfield Counties

Supporting documentation:

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Epstein, E.E. 2017. Natural communities, aquatic features, and selected habitats of Wisconsin. Chapter 7 in *The ecological landscapes of Wisconsin: An assessment of ecological resources and a guide to planning sustainable management*. Wisconsin Department of Natural Resources, PUB-SS-1131H 2017, Madison.

Galois, P. et J. Bonin. 1999. Rapport sur la situation de la tortue des bois (*Clemmys insculpta*) au Quebec, Faune et Parcs Quebec. Direction de la faune et des habitats, Quebec, 45p.

Kingsbury, B.A. and J. Gibson. (editors). 2012. Habitat Management Guidelines for Amphibians and Reptiles of the Midwestern United States. Partners in Amphibian and Reptile Conservation Technical Publication HMG-1, 2nd Edition. 155 pp.

Moll, D. & E.O. Moll. 2004. The Ecology, Exploitation, and Conservation of River Turtles. Oxford University Press. pgs. 262-263.

Wisconsin Department of Natural Resources. 2015. Wisconsin Wood Turtle Species Guidance. Bureau of Natural Heritage Conservation, Wisconsin Department of Natural Resources, Madison, Wisconsin. PUB-ER-684.