

August 4, 2024

Sent via email and online portal

Mr. Michael Friis
Wisconsin Coastal Management Program
101 E Wilson Street, 2nd Floor
P.O. Box 8944
Madison, Wisconsin 53708
Michael.friis@wisconsin.gov

Re: Consistency Review for Enbridge Energy's Line 5 Reroute

Dear Mr. Friis:

The undersigned organizations, 350 Wisconsin, Clean Wisconsin, Midwest Environmental Advocates, and Sierra Club Wisconsin Chapter, appreciate the opportunity to comment on the Wisconsin Coastal Management Program's (WCMP) consistency review for Enbridge Energy's proposed Line 5 segment relocation project in northern Wisconsin (the Line 5 Reroute).

Over 50 years ago, Congress passed the Coastal Zone Management Act of 1972 (CZMA) to help states address the growing impact of development, industry, and pollution on the nation's coastal zone, including the Great Lakes.¹ Under the CZMA, Wisconsin developed the WCMP to protect the ecological, economic, and aesthetic assets of Wisconsin's Great Lakes coasts for all Wisconsinites, including those of future generations.² The WCMP and its policies are essential for protecting Lake Superior and Wisconsin's fragile coastal natural areas, which WCMP acknowledges are in an "increasingly tenuous position."³

The Bad River watershed and Lake Superior shoreline are extremely valuable coastal resources. As the healthiest and largest of the Great Lakes, Lake Superior is a critical source of drinking water for many communities.⁴ Its uniquely forested watershed contains sensitive natural areas, including

¹ See generally Linda Malone, *The Coastal Zone Management Act*, 1 Env'tl. Reg. of Land Use §§ 3-5 (2024); Lieutenant Commander Joseph Romero, *Uncharted Waters: The Expansion of State Regulatory Authority Over Federal Activities and Migratory Resources Under the Coastal Zone Management Act*, 56 Naval L. Rev. 137 (2008); Eric Laschever, *Resisting Regulatory Rollback in the Trump Era: The Case for Preserving CZMA Consistency*, 50 Env'tl. L. Rep. 10134 (2020).

² See Wisconsin Coastal Management Program, *Coastal Strategic Vision for the Great Lakes* 7 (2007) (Wisconsin's coastal management goal is "[t]o preserve, protect, develop and where possible, to restore or enhance, the resources of Wisconsin's coastal area for this and succeeding generations. . . ."), and 9 ("The Great Lakes coastal area of Wisconsin is a valuable ecological, economic and aesthetic state resource, and Lakes Superior and Michigan and Green Bay are recognized as vast water resource reservoirs which benefit the state."), https://doa.wi.gov/DIR/Coastal_Strategic-Vision-for-Great-Lakes.pdf. (Hereinafter, "Strategic Coastal Vision.")

³ See *id.* at 12 ("Coastal natural areas, which include forests, lakes, streams, swamps, bogs and marshlands, are in an increasingly tenuous position.").

⁴ See Mich. Dep't of Env't, Great Lakes, & Energy, *Lake Superior*,

wetlands, that harbor extraordinary biodiversity.⁵ Wisconsin's coastal wetlands are also important for the critical roles they play protecting the shoreline from erosion, improving water quality, and preventing floods.⁶ One of those wetlands, the Kakagon and Bad River Sloughs complex contains the last extensive coastal wild rice beds in the Great Lakes and provides habitat for several rare and threatened species, as well as migratory birds.⁷ Due to their ecological importance, the sloughs are recognized as a National Natural Landmark⁸ and a Ramsar Wetland of International Importance.⁹

Enbridge is currently operating its Line 5 oil and natural gas liquid (NGL) pipeline in trespass on the Bad River Reservation and has been since 2013.¹⁰ To continue profiting from the pipeline when finally forced to rectify this trespass, Enbridge proposes to reroute the pipeline around the boundaries of the Bad River Reservation. However, the rerouted pipeline would remain in the Bad River watershed, contrary to the wishes of the Bad River Band.¹¹

Construction and operation of the Line 5 Reroute would have a significant impact on Wisconsin's coastal resources. Construction will require hundreds of additional, vulnerable water crossings, and impact a 41-mile corridor within Wisconsin's coastal zone, disturbing at least 101.1 acres of wetlands. These impacts will persist even after construction, as the plan includes a permanent 30-foot access corridor along the length of the reroute, which will cause permanent habitat fragmentation and increase the risk of invasive species penetration. The corridor will also be continually disturbed by inspection and repairs. The Line 5 Reroute will also require Enbridge to permanently clear woody vegetation from 30.06 acres of forested wetlands and 6.31 acres of shrub wetlands. Woody wetlands serve a variety of important ecological functions, including flood mitigation and wildlife habitat.¹²

<https://www.michigan.gov/egle/about/organization/water-resources/great-lakes-coordination/lake-superior> (last visited June 17, 2024, 1:17pm); Rob Hyde & Liz LaPlante, *Lake Superior LAMP 2015-2019*, Lake Superior P'ship, 19, 21, 75 (2016) <https://binational.net/wp-content/uploads/2022/09/Lake-Superior-LAMP-2020-2024.pdf>.

⁵ See *id.* at 11, 26.

⁶ *Wetland Functional Values*, Wis. Dep't of Nat. Res., <https://dnr.wisconsin.gov/topic/Wetlands/function.html> (last visited July 18, 2024); *Importance of Great Lakes Coastal Wetlands*, U.S. Env't Prot. Agency, https://19january2021snapshot.epa.gov/great-lakes-monitoring/importance-great-lakes-coastal-wetlands_.html (last visited July 18, 2024); Joanna Grand et al., *Prioritizing Coastal Wetlands For Marsh Bird Conservation In The U.S. Great Lakes*, 249 *Biological Conservation* (Sept. 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0006320720307667?dgcid=author>.

⁷ Ramsar Sites Information Service, Kakagon and Bad River Sloughs, <https://rsis Ramsar.org/ris/2001> (last visited Aug. 8, 2024) (Hereinafter, "Ramsar.")

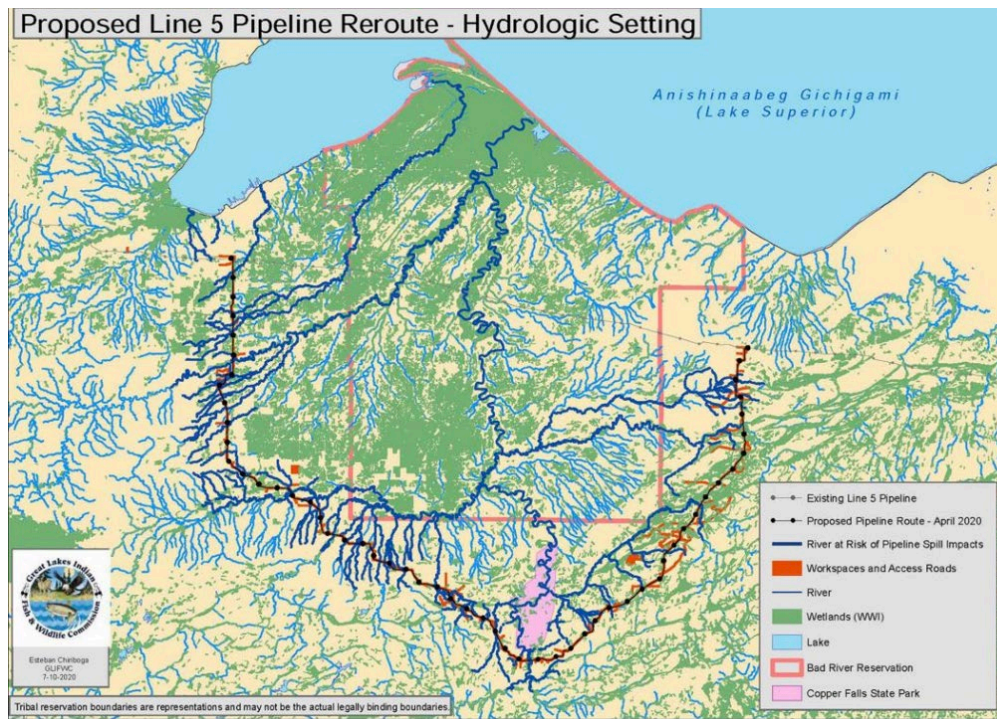
⁸ Nat'l Park Serv., *National Natural Landmarks: Kakagon Sloughs*, <https://www.nps.gov/subjects/nl landmarks/site.htm?Site=KASL-WI> (last visited Aug. 1, 2024).

⁹ Ramsar.

¹⁰ Laina Stebbins, *Judge Rules for Tribe in Line 5 Suit, Says Enbridge Must Pay Damages*, Wisconsin Examiner, Sep. 12, 2022, available at <https://wisconsinexaminer.com/2022/09/12/judge-rules-for-tribe-in-line-5-suit-says-enbridge-is-trespassing-and-must-pay-damages/>.

¹¹ Izzy Ross, *Tribes Urge U.S. to Weigh in on Line 5 Case as Appeal Sits in Court*, Interlochen Public Radio, Mar. 8, 2024, available at <https://www.greatlakesnow.org/2024/03/tribes-urge-u-s-to-weigh-in-on-line-5-case-as-appeal-sits-in-court/> ("It's a band-aid for an aging pipeline," said Stefanie Tsosie, an Earthjustice attorney who has represented the tribe. "The risk of an oil spill will still exist in the Bad River watershed. And instead of moving it out of the watershed, [Enbridge moves] it upstream of the reservation. So now the entire reservation would be subject to an oil spill."')

¹² U.S. Env't Prot. Agency, *EnviroAtlas: Percent Forest and Woody Wetlands*, 1 (2020), <https://enviroatlas.epa.gov/enviroatlas/DataFactSheets/pdf/ESN/Percentforestandwoodywetlands.pdf>



*Image 1: Map of Line 5's current path and proposed northern relocation route.
(Source: Great Lakes Indian Fish and Wildlife Commission)*

Enbridge claims it will restore some wetlands and other disturbed habitats to their original condition. However, wetlands are difficult, and sometimes impossible, to restore due to the subtle interactions of hydrology, soils, nutrients, vegetation, and animal life in each wetland.¹³ Enbridge fails to provide adequate plans in permitting documents for how it will successfully restore these unique ecosystems.

While certain impacts to coastal resources from construction and operation of the Line 5 Reroute are significant, the very real threat of oil spills must also be considered in the context of WCMP's consistency review. Unfortunately, Enbridge has a poor safety and environmental record, both with Line 5 and other pipelines.

Line 5 itself has spilled at least 29 times in the last 50 years, releasing more than 1.1 million gallons of oil into the environment.¹⁴ And only one of these spills is known to have been identified by Enbridge's leak detection systems.¹⁵ Less than 15 years ago, Enbridge was responsible for one of the largest inland oil spills in U.S. history when its Line 6B in Michigan ruptured and spilled oil for 17 hours until a local utility reported it to Enbridge. In fact, Enbridge's own actions resulted in

¹³ Jon Kusler, *Common Questions: Wetland Restoration and Enhancement*, 1 (2006), https://www.nawm.org/pdf/lib/20_restoration_6_26_06.pdf.

¹⁴ Garret Ellison, *Enbridge Line 5 has spilled at least 1.1M gallons in past 50 years*, MLIVE MEDIA GROUP (Apr. 26, 2017), https://www.mlive.com/news/2017/04/enbridge_line_5_spill_history.html (last visited July. 18, 2024).

¹⁵ *Id.*

hundreds of thousands of additional gallons of oil being released than otherwise would have been.¹⁶ In the end, over a million gallons of oil devastated 38 miles of the Kalamazoo River.

The Line 5 Reroute would cross 180 streams, wetlands, and other water bodies in the Lake Superior basin; a spill would endanger drinking water sources, essential wildlife habitat, and recreation resources such as Copper Falls State Park. The reroute poses a threat to all the ecosystems in its path, all of which are coastal natural areas the WCMP protects.

Construction of the Line 5 Reroute requires permitting under the Clean Water Act and an affirmative public interest determination by United States Army Corps of Engineers (USACE). Pursuant to the CZMA, any applicant for these federal permits:

shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. . . . No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification[.]¹⁷

The applicant must provide sufficient data to the state to allow it to determine if the proposed action is consistent and complies with the state's coastal zone management program.¹⁸

Notably, the USACE's Draft Combined Decision Document (DCDD) and associated appendices fail to provide information adequate for WCMP to analyze the Line 5 Reroute for consistency with the state's enforceable policies (EPs). For example, USACE does not substantively address the possibility of an oil spill in the DCDD—a foreseeable consequence of constructing the reroute given Enbridge's poor history of spills—claiming the consideration of impacts of a spill is outside of its jurisdiction.¹⁹

Given the DCDD's limited scope and Enbridge's lack of permits from Wisconsin DNR, we are concerned WCMP lacks the information necessary to appropriately analyze the Line 5 Reroute for consistency with the EPs. Given the importance and sensitivity of the coastal resources at stake, Enbridge's proposed Line 5 Reroute must be heavily scrutinized.

We respectfully submit that the proposed construction of the Line 5 segment relocation does not fully comply with all applicable EPs. Accordingly, we ask that WCMP deny the request for concurrence that USACE's permitting action is consistent with Wisconsin's EPs. In the alternative, we believe WCMP should, at least, decline to issue a consistency determination at this time, and

¹⁶ See Nat'l Trans. Safety Board., Pipeline Accident Report: Enbridge Incorporated, Hazardous Liquid Pipeline Rupture and Release, Marshall Michigan, JULY 25, 2010 (2012), <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1201.pdf> (last visited on Aug. 1, 2024).

¹⁷ 16 U.S.C. § 1456(c)(3)(A).

¹⁸ See 15 CFR § 930.58.

¹⁹ U.S. Army Corps of Engineers, *Enbridge Line 5 Wisconsin Segment Relocation Project: Draft Environmental Assessment, Clean Water Act Section 404(b)(1) Guidelines Evaluation, and Public Interest Review* at 30 (May 20, 2024) (Hereinafter, "DCDD") ("Oil spills are typically associated with pipeline operation, which is outside the Corps [sic] purview to consider.") (The DCDD and appendices are available at https://www.mvp.usace.army.mil/Enbridge_Line5-WI/)

closely investigate the extent to which the concerns raised herein, and/or in other public comments, require denial, or delay and submission of additional information to fully consider the impacts of the Line 5 Reroute on Wisconsin's coastal zone.

The following tables outline information about the Line 5 Reroute and USACE's DCDD relevant to WCMP's consistency review for specific EPs.

I) Coastal Water Quality and Quantity and Coastal Air Quality

Enbridge's proposed project does not adequately address the project's impacts on coastal water and air quality. The Corps' DCDD relies exclusively on data and statements from Enbridge regarding the project's water and air quality impacts, without performing independent verification of Enbridge's claims. Importantly, USACE does not consider the impacts of greenhouse gas emissions from the pipeline's operation. Enbridge and USACE also fail to address the impacts of an oil spill on coastal water quality.



*Image 2: River Contaminated by Enbridge Oil Spill in 2010
(Source: United States Environmental Protection Agency)*

WCMP Enforceable Policy²⁰	Consistency Concern
1.2) An interim goal is the protection and propagation of fish and wildlife and the maintenance of water quality to allow recreation in and on the water to be achieved.	<p>The federal EPA warned that the re-route project will have "substantial and unacceptable" impacts on the Bad River and on the Kakagon-Bad River Sloughs, the largest wetland complex on Lake Superior and a RAMSAR Wetland of international importance.</p> <p>The Kakagon-Bad River Sloughs are a mosaic of sloughs, bogs, and coastal lagoons that harbor the largest wild rice bed on the Great Lakes, supporting important fish spawning and nursery sites alongside critical stopover habitats for migratory birds.</p>

²⁰ See Coastal Strategic Vision at Attachment C: Specific State Coastal Policies for a list of all EPs.

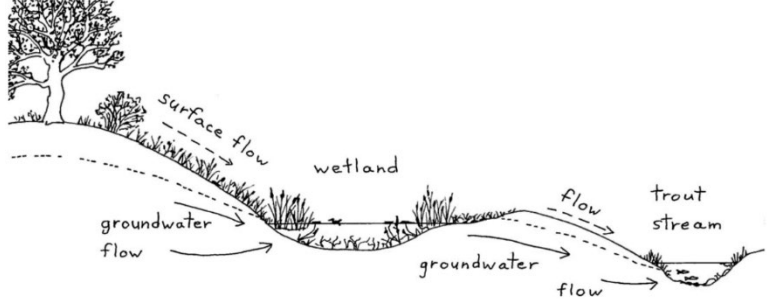
	<p>30.06 acres of forested wetlands and 3.86 acres of shrub wetlands will be permanently cleared of woody vegetation.²¹</p> <p>Enbridge and the USACE grossly underreport impacts on wildlife: researchers with the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) have found that many more endangered species could be affected by Line 5 relocation than Enbridge reports.²²</p> <p>Enbridge and the USACE fail to address the risk of an oil spill and the consequences of an oil spill on water quality, recreation, wildlife, or fish.</p>
<p>1.3.1) Substances with the potential to cause groundwater contamination shall be regulated to ensure compliance with groundwater quality protection standards.</p>	<p>Enbridge and the Corps fail to adequately consider the possibility and risk of groundwater contamination caused by an aquifer breach, which occurred four times during the recent Line 3 construction.</p> <p>Nine areas on the route (3.1 miles) have a "[m]oderate likelihood" of encountering conditions favorable for aquifer breaches from construction.²³</p> <p>Aquifer breaches are a foreseeable outcome resulting from HDD especially, and other construction activities. While constructing the Line 3 Replacement Project in 2021, Enbridge punctured four aquifers. The breaches caused nearly 300 million gallons of groundwater to flow to the surface and introduced pollutants to the aquifer, incurring fines and a criminal charge for Enbridge. Notably, Enbridge failed to report an aquifer breach and did not meet deadlines to address the breach.²⁴</p> <p>Sediments, fuel, lubricants, drilling fluids, and blasting contaminants can also contaminate groundwater. Enbridge does not have any site-specific blasting plans to address unique qualities and considerations of different high-quality wetlands or wetlands with shallow bedrock/high groundwater seeps.</p> <p>The effect of an oil spill on groundwater quality is also not considered or addressed. Wetlands and groundwater are deeply connected and interdependent, continually exchanging water. An oil spill in wetlands would be devastating to groundwater quality.</p>

²¹ DCDD at 12.

²² Frank Vaisvilas, *Tribal Officials Call for Federal Review of Wisconsin Oil Pipeline Project They Say Could Kill Rare Species*, Green Bay Press-Gazette (2022), <https://www.greenbaypressgazette.com/story/news/native-american-issues/2022/01/25/tribes-enbridge-wisconsin-oil-pipeline-could-kill-rare-species/9203365002/> (last visited Aug. 1).

²³ DCDD at 70.

²⁴ Kirsti Marohn, *A Year After Breach, Enbridge Says It's Stopped Line 3 Groundwater Aquifer Leak*, MPR News (2022) ("Enbridge didn't immediately report the breach to state regulators. It wasn't until June that Minnesota Department of Natural Resources officials pieced together what had happened through reports from independent monitors."), <https://www.mprnews.org/story/2022/01/20/enbridge-says-its-stopped-line-3-groundwater-aquifer-leak>.

	 <p><i>Image 3: Interconnection between Groundwater, Wetlands, and Other Surface Waters</i> (Source: Wisconsin Wetlands Association)</p>
<p>1.4) Disposal in the waters of the state of the following defined pollutants shall be restricted: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.</p>	<p>Construction activities include temporary and permanent discharge/fill of materials into wetlands. There will be .02 acres of wetlands permanently filled, and 101.1 acres of wetland temporarily filled.²⁵</p> <p>There will be a 95-ft-wide to 120-ft-wide construction workspace, which will include a spoil side.²⁶ In wetlands, Enbridge plans to have a 50-ft setback except when a smaller setback is necessary.²⁷ Enbridge fails to identify areas or site conditions where a smaller setback will be necessary. If a larger construction workspace is necessary, it is not clear what the impact of additional pollutants will be on wetlands and other coastal natural areas.</p>
<p>1.5.2) The state shall halt and reverse pollution of its waters by soil erosion by administering goals and standards for conservation of soil and water resources, providing for cost sharing, technical assistance and educational programs to improve land management practices, and enabling the regulation of harmful land use and land management practices. The state shall address construction site erosion control and storm water management through municipal ordinances and state plans for the protection of the state's groundwater, surface water, soil, and related resources.</p>	<p>Stormwater runoff is possible from construction activities and may be exacerbated by the more frequent flooding and flash flooding events experienced in Ashland County. It is not clear how the temporary dams will contribute to stormwater runoff.</p> <p>There is not an established Stormwater Pollution and Prevention plan, as required by the DNR. The DCDD states that there will be Stormwater Pollution and Prevention Plan. It is impossible to determine if the Line 5 relocation is federally consistent with this EP until Enbridge provides this plan.</p>
<p>1.9) Thermal discharges shall not raise the receiving water temperatures more than 3 degrees F above the existing natural temperature at the boundary of mixing zones.</p>	<p>Enbridge plans to monitor water temperature, but does not explain whether construction discharge, including sediments, fuel, lubricants, drilling fluids, and blasting contaminants, is expected to impact water temperatures.</p>

²⁵ DCDD at 11.

²⁶ *Id.* at 11, 16.

²⁷ *Id.*

1.10) The discharge of toxic pollutants in toxic amounts shall be prohibited.	Construction equipment will impact air quality, including nitrous oxide, carbon monoxide, volatile organic compounds, sulfur dioxide, and minimal amount of Hazardous Air Pollutants in unclear quantities. ²⁸
1.12) No person may sell, distribute, use or dispose of any pesticide without obtaining any required licenses and following requirements of the Wisconsin Statutes, the Wisconsin Administrative Code, and local regulations.	Herbicides will be used for major infestation areas of invasive species; it's unclear which herbicides will be used and whether Enbridge or its contractors will be able to secure the proper licenses. ²⁹
1.15.1) No person may conduct an activity for which the Wisconsin department of natural resources denies a required water quality certification. No person may violate a condition imposed by the department in a water quality certification.	Enbridge does not currently have the required water quality certification.
1.26) For a construction site that has 5 or more acres of land disturbing construction activity, a written plan shall be developed and implemented, incorporating best management practices, to control 80% of the sediment load. A written storm water management plan shall be developed and implemented for each postconstruction site.	<p>The project will disturb more than 5 acres of land. 101.1 acres of wetlands will be affected.³⁰</p> <p>There is no stormwater or sediment management plan mentioned, and Enbridge and the Corps fail to address whether 80% of sediment will be controlled by the mitigation measures mentioned.</p> <p>Additionally, the Corps and Enbridge have failed to specify the contents of the slurry that will be used in construction. Even if the contents are not considered pollutants, the slurry contents could contribute to sedimentation and suspended solids.</p>

II) Coastal Natural Areas, Wildlife Habitats and Fisheries

Line 5 will have severe and permanent impacts on coastal natural areas, wildlife habitats, and fisheries. Enbridge and USACE fail to adequately consider the cumulative, long-term impacts of construction, ongoing right-of-way (ROW) maintenance, woody vegetation removal, and habitat fragmentation, nor do they provide specific plans for restoring the unique hydrology, microtopography, functional values, and vegetation of impacted wetlands or other coastal natural areas. These qualities are difficult to restore.³¹ Additionally, oil spill impacts on wetlands are often severe and can take decades to fully recover.³²

²⁸ *Id.* at 78.

²⁹ See DCDD Appendix 13, *Invasive and Noxious Species Management Plan*, 1 (2023), https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Enbridge/EnbridgeLine5/DCDD/13.%20Invasive%20and%20Noxious%20Species%20Management%20Plan.pdf?ver=9ZajJXjhdZFB1-yb0_TBpQ%3d%3d.

³⁰ DCDD at 11.

³¹ See Kusler at 2-3.

³² *Id.* at 2 (“Natural, undisturbed wetlands are usually characterized by organic soils developed over thousands of years and subtle relationships of hydrology, soils, nutrients, vegetation, and animal life. Total restoration of a wetland in a manner that ‘totally duplicates’ all aspects of a naturally occurring wetland including soils is



*Image 4: Blue Heron Covered in Crude Oil from Enbridge Oil Spill
(Source: Michigan Department of Environment)*



*Image 5: Forest Cleared for Enbridge Construction and Permanent ROW
(Source: Enbridge)*

impossible in a short period of time.”); Jacqueline Michel1, Nicolle Rutherford, & Scott Zengel, Oil Spills in Marshes; [https://www.nawm.org/pdf lib/20_restoration_6_26_06.pdf](https://www.nawm.org/pdf_lib/20_restoration_6_26_06.pdf)<https://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/resources/oil-spills-marshes.html>.

WCMP Enforceable Policy	Consistency Concern
<p>2.8) The Wisconsin department of natural resources shall identify and classify trout streams to ensure adequate protection and proper management of this unique resource.</p>	<p>There will be dredged or fill material in two trout streams, Feldcher Creek and Camp Four Creek; other trout streams will be crossed with HDD method or with bridges with, allegedly, no discharge.³³</p> <p>Construction will result in loss of vegetation over waterbodies, including at trout streams.</p> <p>Enbridge and the Corps claim the impacts will be minor and temporary.</p> <p>Enbridge and the Corps also do not address the impact an oil spill will have on trout streams or spawning sites; they also do not address how pollutants introduced by an aquifer breach during construction will impact trout streams or spawning sites.</p>
<p>2.15) The Wisconsin department of natural resources shall preserve, protect, restore and manage the state's wetland communities to be sustainable, diverse, and interspersed with healthy aquatic and terrestrial communities. Department actions must be consistent with the goal of maintaining, protecting and improving water quality. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values.</p>	<p>Construction activities include temporary and permanent discharge/fill of materials into wetlands. The project will cause unavoidable, permanent fill in wetlands even with mitigation measures. There will be at least 998ft² of permanent fill in wetlands, and 101.1 acres of temporary fill. There will be 12.53 acres of temporary matting in wetlands.³⁴</p> <p>Construction will result in a 120-foot-wide to 95-foot-wide right-of-way through wetlands, and a permanent 50ft permanent maintenance corridor over the pipeline. 33.92 acres of wetland will be permanently cleared of woody vegetation.³⁵</p> <p>Enbridge and the Corps do not address the impact of an oil spill, which is likely given Enbridge's history of oil spills, on wetlands and wetland wildlife. Wetlands oil spills are devastating and difficult to restore. Numerous bird species, amphibians, and reptiles are particularly vulnerable to oil spills.³⁶</p>
<p>2.19) Unless the Wisconsin department of natural resources has issued a permit or the legislature has granted authorization, no person may change the course of or straighten a navigable stream</p>	<p>The project will disturb the course of streams with dams.</p> <p>Enbridge plans to restore streams to their natural course but does not detail how this will be accomplished. Enbridge also does not explore how the temporary dams will impact flooding events.</p>

III) Coastal Erosion and Flood Hazard Areas

Flooding is a serious concern in northern Wisconsin. Fluctuating water levels in recent years have significantly impacted communities around Lake Superior and have made coastal resilience an increasingly urgent need in these communities.³⁷ In addition to many instances of flash flooding,

³³ DCDD at 60.

³⁴ *Id.* at 11.

³⁵ *Id.*

³⁶ Esteban Chiriboga, *Cumulative Environmental Risk of Crude Oil and Natural Gas Pipelines in the 1837, 1837, 1842, and 1854 Ceded Territories*, Great Lakes Indian Fish & Wildlife Commission, 11 (2022), available at <https://data.glifwc.org/reports/>.

³⁷ Wisconsin Coastal Management Program, *Wisconsin Great Lakes Chronicle*, 8 (2023) p. 8 (“Due to fluctuating water levels in recent years, a need to increase coastal resilience has been felt by communities around the Great

major flood events have occurred in 2012, 2016, and 2018.³⁸ In the 2018 floods, Whittlesy Creek and the White River reached record crests; the deadly flooding washed out many roads, bridges, and culverts in Ashland County and surrounding counties. Repetitive flood damage not only causes administrative and economic challenges, but also poses a significant threat to public safety.³⁹ Healthy wetland-based hydraulic processes, which Line 5 Reroute construction will interfere with, are fundamental to flood prevention in Wisconsin.⁴⁰ Flooding also contributes to pipeline erosion, increasing the need for inspection and the likelihood of oil spills.⁴¹



Lakes including Lake Superior. With issues such as flooding, coastal erosion and more frequent extreme weather events on the rise on Lake Superior shorelines, there is an urgent need for available education and resources on these issues within the region.” (“Due to fluctuating water levels in recent years, a need to increase coastal resilience has been felt by communities around the Great Lakes including Lake Superior. With issues such as flooding, coastal erosion and more frequent extreme weather events on the rise on Lake Superior shorelines, there is an urgent need for available education and resources on these issues within the region.”), https://doa.wi.gov/DIR/Coastal_23-Wis-GL-Chronicle.pdf.

³⁸ NOAA, *Historic June 2012 Flood in Duluth and the Northland*, https://www.weather.gov/dlh/june2012_duluth_flood#:~:text=A%20swath%20of%20impressive%20rainfall,and%20Bayfield%20counties%20in%20Wisconsin (last visited Aug. 1, 2024); Richard Davies, *USA – Deadly Floods in Wisconsin and Minnesota After 254mm of Rain in 24 Hours*, Flood List, <https://floodlist.com/america/usa/wisconsin-minnesota-floods-july-2016> (last visited Aug. 1, 2024); Faith Fitzpatrick, *Flood of July 2016 in northern Wisconsin and the Bad River Reservation*, Scientific Investigations Report 2017-5029 (2017), <https://pubs.usgs.gov/sir/2017/5029/sir20175029.pdf> (last visited Aug. 1, 2024).; NOAA, *Major June Flooding In the Northland* (2018), https://www.weather.gov/dlh/June15-17_2018flooding (last visited Aug. 1, 2024).

³⁹ Wisconsin Wetlands Association, *Ashland County Adopts Natural Flood Management Strategies to Protect Local Roads*, Mar. 10, 2023, available at <https://www.wisconsinwetlands.org/updates/ashland-county-adopts-natural-flood-management-strategies-to-protect-local-roads/> (“Repetitive flood damages create public safety, administrative and economic challenges for local governments. This addendum expands our understanding where flooding is posing problems at road crossings and how restoring natural infrastructure can alleviate these flooding challenges in a cost-effective way.”)

⁴⁰ See Paul G. Kent et. al., *The Challenge of Wisconsin's Water Abundance: Managing Stormwater in A Watershed Context*, Wis. Law., May 2022, at 20 [https://www.westlaw.com/Document/I9904a224daf611ec9f24ec7b211d8087/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cbt1.0](https://www.westlaw.com/Document/I9904a224daf611ec9f24ec7b211d8087/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cbt1.0)

⁴¹ Danielle Kaeding, *Spring Flooding Worsens Erosion Near Enbridge Pipeline, Heightening Fears of Exposure*, WPR (2023), <https://www.wpr.org/economy/wisconsin-spring-flooding-erosion-enbridge-pipeline-bad-river-tribe>.

Image 6: Ashland County 2016 Floods, (Source: ReadyWisconsin / Civil Air Patrol)



*Image 7: Bad River 2023 Flood Near Enbridge's Line 5
(Source: [Enbridge](#))*


WCMP Enforceable Policy	Consistency Concern
3.2) Within unincorporated areas, a setback of 75 ft. from the ordinary high water mark of an adjacent body of water shall be required, unless an existing development pattern exists. A county may enact a more restrictive ordinance.	<p>Temporary workspaces are planned to only be 50ft away from the OHWM.⁴²</p> <p>Vegetation will only be preserved within 20ft of the OHWM.⁴³</p> <p>It is unclear whether fill material will be below the OHWM.</p>
3.4) All new subdivision plats, buildings, structures, roads, sanitary or other facilities which are reviewed by state agencies and which are in existing and potential flood hazard areas shall be prevented from exposing citizens to unnecessary hazards or cause future public expenditures for flood disaster relief.	<p>Construction will occur in flood plains and will impact flood plains with HDD, especially when matting is used for crossings.</p> <p>Construction will impact, at a minimum, Bay City Creek, Brunsweller River, Silver Creek, Beartrap Creek, Krause Creek, White River, Marengo River, portions of the Bad River, and unnamed tributaries with unnumbered Zone A floodplains.⁴⁴</p> <p>It is unclear if the proposed plans are designed to adequately accommodate significant flood events. Further, the Corps and Enbridge do not consider the cumulative impact of construction on the impacted floodplains.</p>

⁴² DCDD at 54.

⁴³ *Id.* at 15.

⁴⁴ *Id.* at 82.

IV) Community Development

WCMP Enforceable Policy	Consistency Concern
<p>4.4) It is the public policy and in the public interest of the state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of citizens.</p>	<p>The Potato River is a Bad River tributary. The Potato River crossing is eligible for listing in the National Register of Historic Places and will be affected by construction. The construction plans do not specify the extent of aesthetic impact Line 5 construction will have on the Potato River crossing. Plans also fail to address the impact of an oil spill affecting the Potato River.</p>  <p><i>Image 8: Potato River</i> (Source: Travel Wisconsin)</p>
<p>4.6) The State Historical Society shall review and comment upon the actions of any state agency or political subdivision that may have an adverse effect upon historic properties, and ameliorate the adverse effects.</p>	<p>The State Historical society has not reviewed or commented upon the potential effects of the Line 5 Reroute.</p>
<p>4.7) State aesthetic resources shall be protected and enhanced through the regulation of billboards, the screening of junkyards, the purchase of scenic easements, the development of parkways, and the establishment and operation of a Rustic Roads program.</p>	<p>There will be a 30ft wide corridor remaining over the centerline of the HDD. There will also be dredging and discharge impacts on wetlands, as well as permanently cleared forests.⁴⁵</p> <p>Aesthetics will be especially impacted on the eastern portion of the route.⁴⁶</p> <p>Only 8.7% of the project is collocated with other infrastructure.⁴⁷</p> <p>Enbridge and the Corps fail to identify the impacts of an oil spill on aesthetic resources.</p>
<p>4.8.1) Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway. Waterway uses shall be equally available to all waterway users and</p>	<p>Construction of the Line 5 Reroute will temporarily obstruct navigable waters.⁴⁸ An oil spill impacting the White River could severely limit public rights of navigation.</p>

⁴⁵ *Id.* at 11.

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 72.

⁴⁸ *Id.* at 11, 49.

include enjoyment of natural scenic beauty and serenity. These public rights and uses may be provided by any combination of publicly and privately owned access facilities which are available to the general public free or for a reasonable fee. The Wisconsin department of natural resources shall exercise its management and regulatory responsibilities to achieve this goal and to assure that levels and types of use of navigable waters are consistent with protection of public health, safety and welfare, including protection of natural resources.	
4.11) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line. Exemptions from permit requirements for the placement of a structure or the deposit of material only apply where the structure or material is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of any other riparian owners.	There will be 72 crossings of navigable water that the Corp regulates as well as 191 bridge crossings not regulated by the Corp. ⁴⁹ It's unclear whether the plan will comply with Wis. Stat. § 30.10.
4.11.2) Unless a contract has been entered into with the Wisconsin department of natural resources or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters. Unless an individual or a general permit has been issued by the department or authorization has been granted by the legislature, no person may remove any materials from the bed of any lake or any navigable stream.	Enbridge will excavate some bed materials during open cut pipeline installation; 72 waterways will be excavated. Enbridge does not have a contract to do this. ⁵⁰ Enbridge and the Corps plan to restore stream beds and banks “as near as possible to preconstruction contours” but do not provide a clear standard or timeline for doing so. ⁵¹

⁴⁹ *Id.* at 14.

⁵⁰ *Id.* at 15.

⁵¹ *Id.*

<p>4.11.5) No owner of riparian land that abuts a navigable water may convey, by easement or similar conveyance, any riparian right in the land to another person, except for the right to cross the land in order to have access 92 to the navigable water. This right to cross the land may not include the right to place any structure or material in the navigable water. This does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project.</p>	<p>Enbridge is negotiating with private landowners for easements; however, those owners do not have the right to convey riparian rights via easements. <i>See Wis. Stat. § 30.133.</i></p>
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In addition to the substantive concerns about the Line 5 Reroute’s consistency with Wisconsin’s coastal policies, we are also concerned with WCMP’s process. First, WCMP initially tied its comment deadline to USACE’s deadline for comment on the DCDD. On July 26, USACE extended its deadline from August 4, 2024, to August 30, 2024 to allow the public sufficient time to review the lengthy DCDD, including several appendices that were updated during the ongoing comment period, as recently as July 12. WCMP declined to follow suit, leaving the public with limited time to review all documents in USACE’s record relevant to WCMP’s review. Second, WCMP’s notice for public comment notes public hearings have been held by Wisconsin DNR and USACE on the attributes of the Line 5 Reroute in their respective jurisdictions but says WCMP will not hold a separate public hearing on the consistency determination. This is unacceptable—only WCMP is responsible for determining the project’s consistency with state coastal policy and none of the previous hearings have been about that determination. WCMP should hold its own hearing so the public can provide input on *this* aspect of the Line 5 Reroute.

We ask that WCMP deny the request for concurrence that the federal permitting action is consistent with Wisconsin’s EPs. Alternatively, WCMP should decline to issue a concurrence determination and closely investigate how much the concerns raised above require denial, delay, or the submission of additional information from the applicant. We appreciate WCMP’s time and attention on this important matter.

Sincerely,

/s/ Emily Park

Emily Park, Co-Executive Director
Stephanie Robinson, Co-Executive Director
Britnie Remer, Fossil Fuel Resistance Organizer
350 Wisconsin
emily.park@350wisconsin.org
stephanie.robinson@350wisconsin.org
britnie.remer@350wisconsin.org

/s/ Brett Korte

Brett Korte, Staff Attorney
Evan Feinauer, Staff Attorney
Shannon Myers, Legal Intern
Clean Wisconsin
634 West Main Street, Suite 300
Madison, WI 53703
bkorte@cleanwisconsin.org
efeinauer@cleanwisconsin.org

/s/ Rob Lee

Rob Lee, Staff Attorney
Anya Janssen, Staff Attorney for Native Nations Partnerships
Midwest Environmental Advocates
634 W. Main St., Suite 201
Madison, WI 53589
rlee@midwestadvocates.org

/s/ Elizabeth Ward

Elizabeth Ward, Director
Sierra Club Wisconsin Chapter
754 Williamson Street
Madison, WI 53703
elizabeth.ward@sierraclub.org