



Bay Mills Indian Community

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Lieutenant Colonel Gregory E. Turner
District Commander
US Army Corps of Engineers
Detroit District
477 Michigan Ave.
Detroit MI 48226

Follow-up from our April 24, 2019 Consultation Meeting regarding Enbridge Energy's Permit Application (Corps File No. LRE-2010-00463-56-N18)

Dear Lt. Col. Turner:

First and foremost, I would like to thank you for the opportunity to continue productive and meaningful consultation with your agency on April 24, 2019 regarding proposed construction activities on the ill-fated placement of Enbridge's Line 5 Pipeline in the Straits of Mackinac. Bay Mills Indian Community, as signatory to the 1836 Treaty of Washington, reserved its right to hunt, fish, and gather, in the ceded lands and waters of northern Michigan for perpetuity—including the Straits of Mackinac. The purpose of this letter is to reiterate our grave concerns and outstanding questions regarding the proposed work and current placement of Enbridge's Line 5 Pipeline, and to outline our requests to the US Army Corps of Engineers, our federal partner with trust responsibility to assist us in protecting our Tribal Nation's treaty-reserved resources.

Bay Mills Indian Community's Concerns, Requests, and Questions to the USACE While Considering Enbridge's Current Permit Application (Corps File No. LRE-2010-00463-56-N18)

Our requests are made on the basis that our treaty-reserved resources, and thus, our cultural lifeways have been and will be perpetually threatened by Enbridge's past and proposed work to fortify the operation and risky placement of their pipeline in the Straits of Mackinac.

Segmentation of Projects

To our knowledge, Bay Mills was not consulted by any state or federal agency prior to the construction of the Line 5 Pipeline. Since 2002, Enbridge has installed helical screw anchors in the Straits of Mackinac. Well over 100 screw anchors have been constructed to date. Prior to this untested and unregulated technology, grout bags have been permitted to support the Line. To the best of our knowledge, support structures have been installed at least 12 times since Line 5 was constructed in the

Straits of Mackinac—and in certain cases, they were installed because the Line was in violation of its 1953 Easement with the State of Michigan and/or at imminent risk of failure¹.

The segmentation of projects by Enbridge is not a new development, and the issue only seems to be compounding. In April 2018, Enbridge attempted to use the third modification to their Consent Decree² to leverage the need for 48 screw anchors, stating that “the consent decree would require 48 new anchors”. Enbridge reasoned that, “criteria set forth with the proposed modified consent decree was designed to reduce the likelihood of spans growing beyond the 75 ft criteria between biennial inspections to less than 1:10,000”. By September 2018, 51 helical screw anchors were being considered—three more than the initial 48 that were to be considered.

For reference, the engineer who completed the risk analysis commissioned by the State of Michigan in the spring of 2018 stated that Line 5 in the Straits of Mackinac had 1:60 odds of failing by 2053³. Within a span of only five months, Enbridge now claims that it has surpassed its goal of 1:10,000 odds.

In the supplemental information in its permit application, Enbridge has stated definite odds of unsupported spans exceeding 75 feet. This claim begs the question as to whether the US Army Corps of Engineers has seen or verified the data that Enbridge is using to justify the need for the proposed screw anchors. Can you please confirm whether this is the case?

Since the initial construction of Line 5 in 1953, the pipeline has never been subject to scrutiny under the National Environmental Policy Act (NEPA). Nor have the risks that Line 5 poses to our treaty-reserved resources in the Straits of Mackinac (or the 1836 Ceded Territory) ever been fully considered or quantified. We are pleased that the Corps has confirmed that Enbridge’s pending applications do not fall under an existing nationwide permit, and must undergo NEPA review.

At a consultation session in Traverse City, Michigan on June 28, 2018, the District Commander told several dozen tribal representatives that the federal trust responsibility “requires” the United States Army Corps of Engineers to examine the impact of the construction activities on tribal reserved treaty rights. We agree.

We request that the Corps, as a federal partner with independent permitting authority, fulfill its trust responsibility by assisting us in initiating a full Environmental Impact Statement to fully quantify the potentially devastating impacts a rupture to Line 5 would have on our treaty-reserved fishery resources in the Straits of Mackinac. Our treaty rights cannot simply be ignored.

¹ Michigan Department of Environmental Quality/United States Army Corps of Engineers Joint Permit Application filed by Enbridge Energy on September 17, 2001. MDEQ File Number 01-24-0046P.

² *United States v. Enbridge Energy, Limited Partnership, et al.*, 1:16-cv-914-GJQ-ESC ECF No. 18-1 filed 08/08/18

³ mLive.com. “Engineer: Line 5 has 1 in 60 chance of breaking by 2053.

www.mlive.com/news/2017/07/line_5_alternatives_meeting.html

Lack of Federally-Approved Incident Response Plans

We ask that the Corps halt or suspend any consideration of further permits related to the Line 5 Pipeline until Enbridge has received federal approval for its Integrated Contingency Plan and Straits Tactical Response Plan⁴ (as referenced throughout the current permit application). By its own admission, Enbridge has damaged the Line 5 Pipeline on multiple occasions while doing maintenance. It would be reckless to authorize any further activities on the Line until the above stated response plans gain federal approval and until the risks to our treaty-reserved resources and fishery have been quantified. In fact, the District Commander suggested as much during our June 28, 2018 tribal consultation session in Traverse City, when he stated that the Corps needed more information about a coordinated spill response.⁵

Lack of Regulation and Oversight of Anchor Support Construction

In addition to the lack of NEPA scrutiny applied to construction activities on Line 5 to date, it is also apparent that there is a complete lack of oversight when it comes to the modified design of the Line 5 Pipeline beneath the Straits of Mackinac.

Enbridge's permit application and their supplemental answers to the Corps' questions state that, "PHMSA does not regulate the use of grout bags or screw anchors that may be used for buoyancy control or for purposes of pipeline support. Accordingly, PHMSA was not engaged with respect to the use of screw anchors within the Straits of Mackinac..." At our consultation meetings with the Corps on June 28, 2018 and April 24, 2019, representatives for the Corps asserted that the agency does not concern itself with the integrity of the design of the Line 5 Pipeline in the Straits of Mackinac, or whether the screw anchors impact the structural integrity of a pipeline that was not designed to be used in conjunction with these anchors when it was initially built. It is worth noting here that the State of Michigan has similarly disclaimed any interest or responsibility for assessing the safety and integrity of the new design for the Line 5 Pipeline.

Based upon the statements made by various state and federal agencies, one point is shockingly clear: there is absolutely no oversight of the design of Enbridge's Line 5 Pipeline beneath the Straits of Mackinac.

Based on its own assertions about the Line 5 Pipeline, it appears that the Corps applies greater scrutiny to the design of breakwalls and piers in the Great Lakes than it does to the design of pipelines carrying millions of gallons of oil through the waters of the Great Lakes.

The Corps cannot adequately complete a thorough review of Enbridge's permit applications without determining the cumulative risk that the screw anchors pose for the integrity and safety of the design of the Line 5 Pipeline beneath the Straits.

⁴ *National Wildlife Federation v. Secretary of the Department of Transportation, et al.*, 2:17-cv-10031-MAG-RSW ECF No. 78 filed 03/29/19

⁵ It is worth noting that the District Commander's statement was made before the United States District Court invalidated Enbridge's prior spill response plan.

The Bay Mills Indian Community requests that the US Army Corps of Engineers halt permitting the use of unregulated construction activities on the Line 5 Pipeline until all risks of the Line have been quantified in a full Environmental Impact Statement.

Bay Mills Indian Community is unaware of any data that shows that the installation of anchor supports is a safe alternative for securing the Line 5 Pipeline. Investigation of reasonable alternatives would be required in an Environmental Impact Statement. In the past, Enbridge has reasoned using anchor supports to stabilize the Line because immense currents in the Straits scour sediments from under the Pipeline. With the recent anchor strike event on April 1, 2018, it is evident to the Bay Mills Indian Community that continued (and past) installation of anchor supports and the scour of currents in the Straits will lead to the Line 5 Pipeline being elevated above the lakebed, thus increasing the likelihood that an anchor-strike or a catastrophic anchor-hooking event will occur.

Has the US Army Corps of Engineers acquired from Enbridge and evaluated data that show the rates of sediment scour/erosion under the Line? If so, have these data shown no evidence that anchor supports raise the pipeline above the lakebed after being exposed to immense currents at the bottom of the Straits of Mackinac? Has the US Army Corps of Engineers measured or verified the force of water currents on Line 5 at the bottom of the Straits?

It is our expectation that these concerns are addressed before any further permitting of support structures.

Conclusion

Bay Mills Indian Community has continually been asking for a seat at the table and for answers regarding the operation of the Line 5 Pipeline in the Straits of Mackinac and how it impacts our legal rights. Even up to the present day, however, we have been shunned from taking a seat at the table, and our voice has been effectively shut-out at all levels of government. We are still asking for answers from the State of Michigan. Even the United States Environmental Protection Agency and United States Department of Justice tried negotiating modifications to Enbridge's consent decree without our input.

Therefore, we are truly hopeful that the United States Army Corps of Engineers, with independent permitting authority compounded by trust responsibility to Bay Mills Indian Community will take appropriate action to halt any permit requests by Enbridge until our questions and concerns are answered, and until the full extent of risks of the Line 5 Pipeline can be evaluated under the fullest extent of NEPA.

Sincerely,



Bryan T. Newland, Tribal Chairman
Bay Mills Indian Community

cc (by email):

Charles Simon, Chief, Regulatory Office
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