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October 14, 2022

Charles M. Simon
Regulatory Project Manager
US Army Corps of Engineers, Detroit District
477 Michigan Avenue
Detroit, MI 48226

Re: United States Army Corps of Engineers Permit Application No. LRE-2010-00463-56-A19 – Preparation of a draft Environmental Impact Statement for Enbridge's proposed Line 5 Tunnel Project

Dear Mr. Simon:

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians ("MBPI or Tribe"), also known as the Gun Lake Tribe, has reviewed the U.S. Army Corps of Engineers' ("USACE") Federal Register Notice of Intent ("NOI") regarding the preparation of a draft Environmental Impact Statement ("EIS") for the proposed Line 5 Tunnel Project ("Line 5") crossing the Straits of Mackinac ("Straits"). As the lead federal agency, USACE is reviewing the Department of the Army permit by Enbridge Energy, Limited Partnership ("Enbridge") under Section 404 of the Clean Waters Act and Section 10 of the Rivers and Harbors Act. MBPI is serving as one of the Cooperating Agencies for the preparation of the EIS under the National Environmental Policy Act ("NEPA") and is participating as a consulting party in the ongoing Section 106 review under the National Historic Preservation Act ("NHPA") since USACE is coordinating the NEPA and NHPA reviews and processes.

Because MBPI has a long-standing and critical interest in the waters of the Great Lakes and pre-contact/historical ties to the Straits of Mackinac, we are requesting that USACE conducts a thorough and complete review of the proposed project as part of its EIS under NEPA. The Tribe is very concerned about significant adverse and likely catastrophic impacts from the proposed project. The Tunnel Project is irreversible and will continue to adversely impact cultural resources, archaeological sites, Tribal lifeways, and Treaty rights as well as the Public Trust throughout construction and operation with no end date possible. As previously stated, this is a large and likely catastrophic project, and to neglect to require a thorough environmental review and EIS would be an egregious error. The scope of the review must consider and describe all direct, indirect, and cumulative impacts of the proposed project, many of which reach far beyond the proposed project area in the geographic area and far beyond the lifespan of the proposed project. The EIS must include specific project details including the lifespan of the Tunnel and new pipeline, the exact materials and amounts that will be transported, the real and potential impacts to water, land, cultural resources, archeological sites, Tribal Treaty Rights and lifeways, and the Straits Traditional Cultural Landscape ("Straits TCL"), as determined eligible for listing for the purposes of the Section 106 review by USACE.

Lessons learned from Line 6B oil spill

The EIS must acknowledge the deep connection and protected interests of Tribal Nations. The Gun Lake Tribe acknowledges and supports the Bay Mills Indian Community ("Bay Mills") and other 1836 Tribal Signatories' right to protect the natural environment and Great Lakes fishery for fish and game to thrive to maintain and exercise their reserved rights to hunt and fish within their ceded territory under the 1836 Treaty of Washington. Additionally, the Tribe understands the detrimental impact of an oil spill anywhere along Line 5 in Michigan to the lakes and river watersheds within the Tribe's ancestral territory. This would not be the first oil spill that the Tribe has experienced in their ancestral territory due to the failure of Enbridge's Line 6B in 2010. The determination of cumulative, indirect, and long-term effects of the Enbridge oil spill in the Kalamazoo River to the Gun Lake Tribe are still on-going over ten years later.

Comprehensive alternatives analysis

Section 404 of the Clean Water Act requires that a project must be the practical alternative with the least impact on the aquatic ecosystem, which is not demonstrated in Enbridge's application. With the revocation of the 1953 easement, Enbridge has failed to provide even one viable alternative. In addition to exploring alternatives to the tunnel with supporting research and data, the EIS should include alternatives to abandonment in place of the decommissioned Line 5 dual pipeline exploring the effects to archaeological sites and cultural resources from the abandonment.

A no action alternative to the proposed tunnel needs to be included within the EIS. The EIS should include a comprehensive third-party Needs Analysis to assess the purpose and need of the proposed action. The NOI lacked any data regarding the short- and long-term needs for transportation of petroleum products via pipelines in general and the Line 5 pipeline more specifically.

Evaluating indirect and cumulative effects

The cumulative and indirect effects of the tunnel must be thoroughly explored for each alternative including but not limited to the impact of vibrations, noise, traffic, dust, light, operational effects (e.g., seepage), viewsheds to cultural resources, archaeological sites, waters, ecosystems, and landscapes. Also, the indirect and cumulative affects survey area must be sufficient to adequately study and model these effects. The loss of access to land and waters and disruption to the ability to exercise cultural lifeways and Treaty rights resulting from each alternative should be described in the EIS.

Ongoing concerns have been stated during consultation and in formal comments regarding USACE's preliminary permit area (last updated map was received in June 2021) for the proposed Line 5 project. During the June 3, 2021, consultation, USACE identified that limitations to their regulatory authority for permitting purposes required them to take a very narrow and restrictive view for establishing the permit area (which is reflected in Appendix C of 33 CFR Part 325). If the limitations on USACE's regulatory authority prevents them from fully addressing direct, indirect, and cumulative effects as identified under the NEPA and NHPA, we would suggest that another lead federal agency be identified who has the authority to determine the Area of Potential Effect (APE) based on the full scope of the project's activities, operational lifespan, and direct, indirect, and cumulative effects per 40 CFR Part 1502 and 36 CFR Part 800.

To adequately describe the cumulative and indirect effects in the EIS, the safe operational life of both the pipeline and tunnel, the potential other utilities to be housed in the tunnel, the effects of short-term and

long-term tunnel and pipeline failure all need to be studied. The replacement of the pipeline into the Tunnel would expand the life of one stretch of the Line 5 pipeline but fails to address the many other weaknesses along the entirety of the pipeline. The EIS indirect effects evaluation needs to address the need for improvement work to address the rest of the aging infrastructure and the associated environmental impact.

Inadequacy of geotechnical studies

The initial geotechnical studies that have been performed on the site for the proposed Line 5 Tunnel Project are inadequate. Not only were they approximately one-tenth of the industry recommended research for a tunnel of this scope, but the inadequacy of the review was also not considered within the reviews undertaken by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) or by the Michigan Public Service Commission (MPSC). The proposed Line 5 Tunnel Project includes using a tunnel boring machine to construct a 21-foot diameter tunnel under the bedrock of the Straits, with approximately 364,000 cubic yards of fill being removed and transported offsite as well as having discharge from the tunnel boring be released intermittently into the Straits.

USACE must thoroughly review the complex geological hydrological conditions that exist in the Straits that could preclude the feasibility of safely building a tunnel in this location. Tunnel boring has the potential to create vibrations that could impact various cultural resources under NEPA (e.g., historic properties, threatened and endangered species, etc.) that continue to be identified by Cooperating Agencies, federally recognized Tribes, and other Section 106 consulting parties in formal, written comments and verbal statements at meetings and site visits. The impacts of these vibrations are not currently well understood. We recommend that USACE conduct a third-party analysis of vibrations from boring to the submerged and terrestrial archaeology sites for the EIS. The third-party research should address potential adverse effects to underwater archaeological sites that could result from tunneling and other activities related to the creation of the tunnel. Since tunnel boring will be ongoing for several years, the third-party analysis must also address the long-term impacts that vibrations may have on cultural resources.

Further evaluation of adverse impacts to endangered and threatened species, cultural resources, and ecosystems

The information that the applicant has provided regarding potential effects on plants, fish, and wildlife is lacking. Additionally, outstanding questions related to the proposed minimization and mitigation of adverse impacts have still not been addressed by USACE or Enbridge.

There have been several points of concern from Enbridge's proposed plans to mitigate adverse impacts to endangered and threatened plant species as well as seeing in-person the damage to the plants that Enbridge and its contractors have done. Many of these plants, such as Houghton's goldenrod and dwarf lake iris, are highly significant and important to Native American Tribes and community members because of the traditional and cultural uses from time immemorial through the present day. We are concerned how Enbridge has delineated areas as wetlands and how they did not include other areas as wetlands that should have been included. We request that the EIS address and USACE reassess and delineate all the wetland areas to study adverse impacts to these areas and threatened and endangered species.

Related, Enbridge has indicated a method to mitigate harm to threatened and endangered species by transplanting them to other areas nearby. During the September site visit, an Enbridge representative verbally indicated that Enbridge has employed this method for previous projects and the transplanted

plants have “thrived.” We request that USACE explore these efforts made by Enbridge in other projects they have undertaken and assess the current condition of the plants and the condition over time. Additional outstanding questions include, how will Enbridge follow through with the actions of restoring the wetlands and threatened and endangered plant species? Furthermore, what specific monitoring efforts will Enbridge conduct to ensure that the wetlands are restored and that the transplanted plants are successful? USACE must investigate this and include it in the EIS in evaluating adverse impacts by including Enbridge’s past methods and subsequent conditions and results. We also request that USACE include in the EIS a third-party study of which significant and traditional Indigenous plants will be impacted by the proposed project and an ethnographic study of how wetland disturbance could impact Indigenous uses of traditional plants during and after the proposed actions.

To adequately assess and describe the impact to plants, animals and ecosystems, a thorough ethnographic study is needed to assist with the assessment of how the wetland, plant and ground disturbance impacts will affect ongoing traditional cultural lifeways and practices (related both to Tribal Treaty rights and the Straits TCL).

Outstanding risks during construction and operation

The EIS must discuss the potential for explosions during Tunnel boring due to the presence of natural methane gas along with the safety measures to prevent unsafe conditions. The continued risk of explosion and/or collapse should also be seriously considered in the EIS with risk data associated to each of the potential materials transported, utilities to be housed and natural gases present.

Third-party studies are needed for the EIS to evaluate the potential for damage to the existing pipeline and potential for leakage of petroleum products into the Straits during tunnel construction and associated activities. As part of this study, an assessment of the area of the Great Lakes watershed should be conducted to determine any and all impacts caused by a leak of the Line 5 dual pipeline during the activities associated with proposed tunneling project.

Climate impacts and economic trends

Greenhouse gas emissions from the Line 5 Project will have a significant impact on climate change. The federal administration has publicly indicated that reducing carbon emissions is a priority. With the nation moving to a cleaner energy future, the question is raised, is the pipeline worth the risk to the public trust resource for the limited timeline we will be fossil fuel dependent? The EIS needs to address the projected fossil fuel-based energy needs in the US, as well as the need for transportation of petroleum and natural gas products through the state and region.

The actual need for this tunnel and the transport of fossil fuels between the upper and lower peninsulas extending the life of the Enbridge Line 5 pipeline needs to be supported by third party data analysis. Enbridge’s own depreciation report noted that the remaining lifespan of the Lakehead system is 20 years due in part to expected climate change policies requiring reduced carbon emissions. The future of our global climate requires the transition to a renewable source of energy which will lead to oil pipelines becoming obsolete infrastructure. The April 20, 2022, Federal Register states that “agencies have discretion to consider a variety of factors when assessing an application for an authorization, removing the requirement that an agency base the decision on purpose and need on the goals of an applicant...” Demonstrating “need” must be supported beyond transporting the current fuel load of the Lakehead System.

Emergency response ability and capacity of the Coast Guard/Environmental Protection Agency (EPA)

The EIS must include an assessment of the area of the Great Lakes basin that would be directly and indirectly affected by a failure of each alternative for the proposed project, as well as an assessment of the area affected by a failure during decommissioning and abandonment of the existing pipelines. After this area is known only then can the Coast Guard and EPA assess their respective ability to respond to a spill or other failure.

Drilling slurry and excavated materials

An estimated 364,000 cubic yards of fill plus the required bentonite additive is an enormous quantity of material to discard from the project area. The disposal routes and locations should be evaluated under both the NEPA EIS and the NHPA Section 106 review. The amount of bentonite and the disposal timeline and method needs to be evaluated. Bentonite poses threats to both aquatic and terrestrial life if not promptly and properly handled. The EIS must analyze if it is possible for the applicant to safely keep the bentonite out of the air and water.

The EIS should include also Cultural Resource Surveys for all the disposal sites. Due to the high concentration of underground cultural resources, even existing quarries or previously disturbed areas should be surveyed. Many quarry sites within the state of Michigan pre-date the NHPA or NEPA and are unlikely to have been previously surveyed before establishment and operation.

Additionally, we would request the following question to be addressed in consultation and within the EIS—Because the fill is removed from Michigan bottomland who "owns" the fill removed from the tunnel?

NHPA Section 106 Review

The Section 106 consultation process and review needs to inform the EIS process and must include the development, consideration, and selection of alternatives. There has continued to be a breakdown of communication between USACE and the participating Section 106 consulting parties regarding the status of the Section 106 review and necessary ongoing consultation to continue identifying cultural resources. Due to various cultural resource surveys being conducted by Enbridge to provide further information for the review, Section 106 consultations should not have been suspended, especially due to the recent notices of two (2) unanticipated discoveries from September 2022 and 2019. Additionally, the way that USACE has coordinated the Section 106 process with NEPA so far has not allowed the full understanding of the extent of the Traditional Cultural Landscape. The natural resources through the environmental review need to also be understood as historical properties. These reviews and processes must be completed in tandem.

Known and anticipated archaeological sites

Based on State Historic Preservation Office (SHPO) records from the State Archaeological Site File (SASF), there are 358 terrestrial archaeological sites located along the shores of Lakes Michigan and Huron or along waterways directly connected to the Straits. This represents more than 1.5% of all known archaeological sites in the state of Michigan concentrated in one small portion of the state. As mentioned previously, the EIS scope needs to examine all potential impacts to terrestrial archaeological sites that could result from the proposed action.

Additionally, many of these sites include the presence of burials, burial belongings, sacred objects, and objects of cultural patrimony. This again exemplifies the need for the EIS and Section 106 reviews and consultations to be completed in tandem to determine direct, indirect, and cumulative effects to all these resources. The ongoing mishandling of unanticipated discoveries by Enbridge and its contractors remains one of the utmost concerns of the Tribe.

Straits Traditional Cultural Landscape

The scope of the EIS must consider the Straits as a Traditional Cultural Landscape and assess potential impacts that could result from the proposed Line 5 Tunnel Project. The Neshnabék Nations consider the Straits to be the heart of their homelands, and these Nations signed the Treaty of Washington in 1836, ceding the land but reserving the rights to fish, hunt, and gather. The Straits are also historically and culturally significant to several other Tribes, including the Potawatomi, Menominee, Mississauga, Huron, Meskwaki, and Sauk, who have important historical and present-day connections to the region.

Impacts to indigenous women, girls, and two spirit people

For Enbridge's Line 3 construction in Minnesota, Enbridge was required to develop a Human Trafficking Prevention Plan with collaborators to address the Missing and Murdered Indigenous Women (MMIW) crisis. The EIS must assess and disclose the effectiveness of the prevention program(s) implemented by Enbridge and other pipeline companies. The EIS should evaluate best practices for protecting indigenous populations with specific commitments.

We appreciate the opportunity to provide scoping comments on the NOI, serve as a Cooperating Agency, and attend public meetings and site visits hosted by USACE. Lakota Hobia and Kaila Akina (kaila.akina@glt-nsn.gov) serve as the primary contacts for the Tribe's participation as a cooperating agency for the preparation of a draft EIS under NEPA. Please contact the Tribal Historic Preservation Office with any further questions or comments.

Sincerely,

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