

# GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294



## • MEMBER TRIBES •

### MICHIGAN

Bay Mills Community  
Keweenaw Bay Community  
Lac Vieux Desert Band

### WISCONSIN

Bad River Band  
Lac Courte Oreilles Band  
Lac du Flambeau Band

### MINNESOTA

Fond du Lac Band  
Mille Lacs Band

Red Cliff Band  
St. Croix Chippewa  
Sokaogon Chippewa

July 14, 2020

*Submitted Via Electronic Mail*

Kerrie E. Kuhne  
Chief, Permit Evaluation Western Branch  
Regulatory Office  
Corps of Engineers, Detroit District  
477 Michigan Avenue  
Detroit, Michigan 48226-2550

Re: LRE-2010-00463-56-A19

Dear Ms. Kuhne:

Great Lakes Indian Fish and Wildlife Commission (GLIFWC or Commission) staff submit these additional comments on Enbridge Energy's application to the Army Corps of Engineers (Corps or Army Corps) in connection with the construction of a tunnel to house the Line 5 pipeline as it travels under the Straits of Mackinac. The Commission is a natural resource agency exercising delegated authority from 11 federally recognized Indian tribes in Michigan, Minnesota, and Wisconsin.<sup>1</sup> These tribes retain reserved hunting, fishing and gathering rights in territories ceded to the United States in various treaties, rights that have been reaffirmed by federal courts, including the US Supreme Court.<sup>2</sup> The ceded territories extend over portions of Minnesota, Wisconsin and Michigan and include portions of Lakes Superior, Michigan and Huron.

GLIFWC's comments on this issue should not be construed as precluding comments by individual member tribes from their own sovereign and on-reservation perspectives.

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<sup>1</sup> GLIFWC member tribes are: in Wisconsin – the Bad River Band of the Lake Superior Tribe of Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, St. Croix Chippewa Indians of Wisconsin, Sokaogon Chippewa Community of the Mole Lake Band, and Red Cliff Band of Lake Superior Chippewa Indians; in Minnesota – Fond du Lac Chippewa Tribe, and Mille Lacs Band of Chippewa Indians; and in Michigan – Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

<sup>2</sup> Among others, see: *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983), cert. denied 464 U.S. 805 (1983); *Lac Courte Oreilles v. State of Wisconsin*, 775 F.Supp. 321 (W.D. Wis. 1991); *Fond du Lac v. Carlson*, Case No. 5-92-159 (D. Minn. March 18, 1996) (unpublished opinion); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 119 S.Ct. 1187 (1999); *United States v. State of Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979); *United States v. State of Michigan*, 520 F. Supp. 207 (W.D. Mich. 1981).

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GLIFWC supports the analysis of its member tribe, the Bay Mills Indian Community (submitted separately by the Tribe), demonstrating the need for tribal consultation, the need for a public hearing, and the need to prepare an Environmental Impact Statement for this project. Prior to these steps, the Corps should require additional detail from Enbridge. Its current application is deficient in a number of respects, as detailed in the comments submitted by the Bay Mills Indian Community.

Tribes that reserved rights to hunt, fish and gather within ceded territories are not often the regulatory authority with direct control over decisions such as this one. The Tribes rely on the federal government to fulfill its obligations as a treaty signatory, and exercise its authorities in ways that preserve and enhance the resources and habitats that support healthy and abundant natural resources. Tribal views were not considered in the 1950s when Line 5 was constructed, the Army Corps must take the opportunity to do so now.

I have asked Ann McCammon Soltis of my staff to be available to answer any questions you may have, she can be reached at 715-685-2102 or [amsoltis@glifwc.org](mailto:amsoltis@glifwc.org). Thank you for your consideration of these comments.

Sincerely,



Michael J. Isham, Jr.  
Executive Administrator