

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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• 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

Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band



December 10, 2021

Dave Siebert, Division Administrator
WDNR Division of External Services
101 S. Webster St. PO Box 7921
Madison, WI 53707-7921

Re: Adequacy of the Line 5 Reroute Draft Environmental Impact Statement (DEIS) for
Release to the Public

Dear Mr. Siebert:

As you know, the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) is an intertribal agency exercising delegated authority from 11 federally recognized Ojibwe (or Chippewa) tribes in Wisconsin, Michigan, and Minnesota.¹ Those tribes have reserved hunting, fishing, and gathering rights in territories ceded in various treaties with the United States. GLIFWC's mission is to assist its member tribes in the conservation and management of natural resources and to protect habitats and ecosystems that support those resources. The proposed reroute of Line 5 is within the territory ceded in the Treaty of 1842. GLIFWC staff appreciate the opportunity to review the draft EIS in advance of its release to the public.

The DEIS for the Line 5 Reroute has a number of flaws, both large and small, that suggest that it is not ready for public review and comment. The November 2021 draft contains typographical errors, incomplete sentences, and nonsensical language that hinders the reader's ability to understand and review the proposed project. More importantly, as we noted in my email dated November 30, 2021, there are information gaps and missing sections in the DEIS that must be addressed before it is made available to the public. This letter describes some of the important areas of missing information that we mentioned in our email, but should not be considered a complete accounting of what our review has uncovered.

¹ 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.

There are several sections that have either incorrect or missing information, or are missing entirely. They include:

- Problems with the characterization of treaty rights and other tribal interests in the project area.
- Inadequate data to support analysis or impact interpretation, for example lack of data to support oil spill fate and transport analysis.
- Incorrect route location information and mapping.
- Exclusion of alternatives by the applicant and incorrect interpretation of the effects of alternatives on treaty rights.
- Missing sections on Cumulative Effects and Water Quality.

The DEIS fundamentally misrepresents the treaty rights of GLIFWC member tribes. This is presumably because the contractor does not understand them. For example, the DEIS states that Alternative RA-2 would have greater impact to treaty harvest access than the preferred alternative because it is longer than the preferred alternative. However, because alternative RA-2 crosses fewer acres of public land than the preferred alternative, the impact to areas currently available for tribal treaty protected harvests would be less than the preferred alternative. In fact, from an off-reservation tribal harvest perspective RA-01 and RA-02 both have the advantage of crossing very little public land that is open to treaty guaranteed tribal harvest. Yet, that does not seem to have been considered by either Enbridge or the writers of the DEIS.

Only three GLIFWC member tribes are listed in the Indigenous Communities Section. Ten of GLIFWC's member tribes have usufructuary rights in the 1842 ceded territory. In addition, the Forest County Potawatomi Community (FCPC) is listed. FCPC is not a signatory to the 1842 Treaty with the Chippewa, and its treaty protected natural resource harvests are likely to be different than for GLIFWC member tribes. Each tribe deserves an accurate description and adequate consideration in the DEIS. As we stated during scoping, GLIFWC would be glad to assist in drafting the DEIS's description of treaty rights.

The DEIS lacks baseline data sufficient to assess potential impacts of the proposed project. For example, since scoping for this project began, GLIFWC has advocated for a fate and transport analysis of areas potentially impacted by crude oil spills. This modeling requires data on hydrology and geomorphology at the proposed stream crossings. Yet the applicant has not provided data that would allow this analysis to be performed. Despite the lack of analysis, the DEIS states, with no justification or support, that impacts of spills are not expected to affect downgradient waterbodies (e.g. Lake Superior). Similar problems in lack of basic data are apparent for wetlands, endangered species, fisheries and access roads, to name a few.

The DEIS contains maps that are outdated and incorrectly show the proposed route. For example, Project Route Maps, Appendix A of the DEIS do not show the currently proposed route. In the area of Popco Road the maps show the pipeline centerline taking a route that would avoid several wetlands which are in fact impacted by the actual proposed route. As another example, the route shown in Appendix A near Block Road misses several wetlands and stream crossings that are actually crossed by

the real proposal. The use of outdated and incorrect maps in the DEIS raises doubts about the accuracy of wetland, stream and other impact analyses.

Throughout the document, sections begin with “Enbridge states” or “According to Enbridge” with little or no information about whether or how the WDNR has independently evaluated these claims. For example, the alternatives section indicates that Enbridge eliminated alternative RA-01 from further consideration because it did not want to cross state land (i.e. Copper Falls State Park). It is unclear if the WDNR accepts Enbridge's rationale or how Enbridge's rejection of RA-01 plays a role in the information available in the DEIS. The DEIS should be the State of Wisconsin's best assessment of the impacts of the proposed project and alternatives. It should not be a summary of the applicants' assessment of its own project.

Finally, entire sections that are standard in an EIS are missing. There are no assessments of cumulative effects or impacts on downstream water quality. This means that there is no analysis of combined impacts of the proposed project with reasonably foreseeable projects (e.g. the proposed excel power line reroute) or evaluation of compliance with the water quality standards of downstream states (i.e. the Bad River Reservation).

The EIS should be complete in its description of current conditions and the potential impacts of the proposed pipeline reroute. We hope that these comments are helpful and that the WDNR will undertake further work on the DEIS before it is released. Please contact me (amsoltis@glifwc.org) or GLIFWC's technical leads Esteban Chiriboga (esteban@glifwc.org) and John Coleman (jcoleman@glifwc.org) with any questions you may have.

Sincerely,

Ann McCammon-Soltis
Director, Division of Intergovernmental Affairs

cc. Todd Ambs, WDNR Deputy Secretary
Ben Callan, WDNR NR Program Manager
Adam Mednick, WDNR Environmental Analysis Review Specialist
Drew Watermolen, WDNR NR Program Manager
Greg Pils, WDNR Bureau Director
Jonathan Gilbert, GLIFWC Biological Services Director
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