

# Impacts to TRIBAL RIGHTS AND RESOURCES *from Oil Pipeline Construction in Wisconsin\**

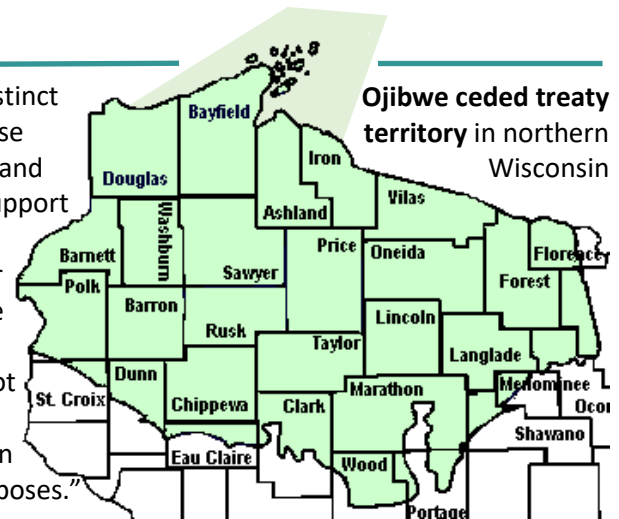
LAST UPDATED JUNE 2020

PRODUCED THROUGH A PARTNERSHIP OF MIDWEST ENVIRONMENTAL ADVOCATES & WISCONSIN'S GREEN FIRE

This guide identifies tribal rights and resources (or non-human relatives) that may be impacted by oil pipeline construction. The guide focuses on opportunities for tribal members or governments to address impacts through participation in state and federal regulatory processes. While government-to-government relations between tribal and other governments are essential to effective decision-making and tribes may provide other input opportunities such as tribal listening sessions, this guide does not focus on those relations and opportunities. Much of this guide, including any quotations, draws from **Great Lakes Indian Fish and Wildlife Commission** publications on **Metallic Mineral Mining** and **Sulfide Mining**.

## Overview of Tribal-Specific Rights and Resources

Tribal nations and members in Wisconsin have rights and concerns distinct from non-tribal people, many rooted in treaties and federal laws. These include concerns for culturally significant and ancestral sites, animals and plants that tribal members hunt, fish, and gather, and habitats that support those sites and species. Of particular note are animals and plants that Ojibwe tribes reserved the right to hunt, fish, and gather outside their reservations in northern Wisconsin in 1837 and 1842 treaties with the United States. These treaty rights have been affirmed by state and federal courts, beginning in the 1970s. These species are important not just as natural resources, but as symbiotic relatives essential to tribal cultures, as they “sustain the lifeways of Indian people who depend on them for spiritual, cultural, medicinal, subsistence, and economic purposes.”



## Potential Impacts

A pipeline could cause multiple impacts during construction or operation. Impacts may stem from increased erosion, pipeline leaks or spills, land disturbance from construction, or impeded access to important sites. Factors such as these could lead to harm to habitats that support fish, wildlife, and plants used by tribal members, lost harvest opportunities, lost economic value from species harvested by tribal members, impacts to tribal culture from environmental harms, and harm to cultural sites and sacred landscapes. Not only are some species, such as wild rice, especially sensitive to environmental changes, but tribal members’ higher-than-average consumption levels mean they more acutely feel impacts such as habitat loss, reduction in species reproductivity, or bioaccumulation of toxins in species they consume. Further, these potential impacts can impair tribal communities and ways of life predicated on the rights, resources, and relationships with the non-human world described in the Overview.

## Importance of Participating

Since tribes and members may be uniquely impacted by pipeline regulatory decisions, it is important that tribal perspectives and impacts be shared during federal, state, and local regulatory processes. Cultural and **Traditional Ecological Knowledge** held by tribal members may provide critical information not just about tribal relationships to natural resources (or non-human relatives), but about the resources themselves and their appropriate management. This sharing of perspectives and impacts in public regulatory processes offers avenues to influence oil pipeline projects distinct from government-to-government communication of impacts from a tribal government to a federal, state, or local decision-maker, and participation in regulatory processes can be done in addition to government-to-government consultation.

## Opportunities to Participate in Regulatory Processes

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Several state and federal regulatory processes provide opportunities for public input from tribes and members. For an overview of all permits and approvals that must be obtained to construct an oil pipeline in Wisconsin, go to <https://midwestadvocates.org/assets/resources/Permits-Approvals-Guide.pdf>. Apart from these, government-to-government consultation provides other important opportunities for tribes to communicate impacts, and tribes may provide their own input processes for members beyond those outlined below.

### *ENVIRONMENTAL REVIEW*

The **National Environmental Policy Act** and **Wisconsin Environmental Policy Act** require federal and state agencies to assess the impacts of their decisions on the environment. Raising impacts to tribal rights and resources during the initial identification of environmental impacts, called **scoping**, encourages agencies to address those issues. In addition, submitting written comments on the **Draft Environmental Impact Statement** can provide agencies with useful information they failed to consider or show why the agency's analysis of tribal impacts is inadequate. This review process then informs the issuance of necessary permits. For details, go to <https://midwestadvocates.org/assets/resources/EIS-Guide.pdf>.

### *ENDANGERED RESOURCE REVIEW*

The **Federal Endangered Species Act** and **Wisconsin Endangered Species Act** require agencies to assess impacts of their decisions on listed endangered and threatened species. Tribes and their members have unique relationships with protected species, such as Gray Wolves, which Ojibwe people traditionally see as brothers to humans, or the Piping Plover, which the Mashkiziibii Natural Resources Department has worked to protect on Lake Superior beaches. Public comments are only solicited if an agency finds unavoidable impacts to a protected species, which require an **Incidental Take Permit**.

### *EMINENT DOMAIN & CONDEMNATION*

The **Public Service Commission of Wisconsin** may authorize oil pipeline companies to acquire property or easement rights to build a pipeline across private lands, though the Commission cannot condemn reservation land owned by a tribe. However, many tribal members do not live, work, recreate, or exercise treaty-reserved rights exclusively within reservation bounds on tribally owned land. Because of this, members may have a range of relevant concerns in this process and can voice any concerns through public testimony or written comments. For details on the eminent domain and condemnation process, go to <https://midwestadvocates.org/assets/resources/PSC-Guide.pdf>.

### *WATER RESOURCE PERMITTING*

Wetland permits are required for the **discharge of dredged or fill material** into wetlands. Waterway permits are required to place a pipeline or associated material on or across the bed of a waterway. Permit approval is based on whether the pipeline will obstruct navigation, be detrimental to the public interest, reduce the waterway's flood flow capacity, or adversely impact fish, wildlife, or scenic beauty. Many treaty-reserved species, such as wild rice and numerous fish species, are sensitive to impacts on their aquatic habitats. **Wisconsin Department of Natural Resources** will hold a minimum 30-day public comment period on these permits, and any person can request that DNR hold a public hearing. For details, go to <https://midwestadvocates.org/assets/resources/Water-Resource-Permitting-Guide.pdf>.

### *HISTORIC PRESERVATION CONSULTATION*

The **National Historic Preservation Act (NHPA)** requires federal and state agencies to consider impacts of their actions on historic properties through consultation with State and Tribal Historic Preservation Officers. Wisconsin's **Historic Preservation Program** requires state agencies to consider impacts even if federal review is not required. Historic properties include any prehistoric or historic districts, sites, buildings, structures, or objects that are or may be listed in the National Register of Historic Places. Also included are any artifacts, records, and remains that are related to and located within historic properties and places of religious and cultural importance to tribes. NHPA's consultation requirement means tribal concerns are typically communicated directly from a tribal government to a state or federal agency. A public comment period would only be held to resolve any adverse impacts found by the agency.

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