



August 29, 2024

Wisconsin's Green Fire Comments on the U.S. Army Corps of Engineers Draft Combined Decision Document for the Enbridge Line 5 Wisconsin Segment Relocation Project

Submitted Electronically

Thank you for the opportunity to review and provide comments on the U.S. Army Corps of Engineers (Corps) Draft Combined Decision Document (DCDD) for the Enbridge Line 5 Wisconsin Segment Relocation Project (L5R). Wisconsin's Green Fire (WGF) is a statewide nonprofit organization that advances the use of science and knowledge in environmental decision making. Our members who have reviewed the DCDD have expertise in natural resources and many related fields. Given the size of the DCDD and appendices, we have not reviewed all topics.

WGF has major concerns about the Enbridge Line 5 pipeline and the L5R. In this letter, we first introduce those major concerns, then provide detailed comments on portions of the DCDD.

- **WGF supports tribal sovereignty.** The Bad River Band of Lake Superior Chippewa has had to shoulder unreasonable risks and disproportionate burden by the presence of Enbridge Line 5 on their reservation since the 1950s. The proposed Line 5 re-route, still in the Bad River watershed, does not remove those risks. **This is an issue of environmental justice in a culturally and environmentally important area.**
- **The effects of an oil spill in the Lake Superior region would be devastating to tribal and non-tribal communities.** The topography, flashy runoff patterns, and remote nature of the watershed, make spill response challenging. Enbridge's history of spills and aquifer breaches is concerning. If the L5R takes place, the pipeline should be built to the highest safety standards to safeguard local communities and areas of deep and irreplaceable significance: Kakagon and Bad River Sloughs, Copper Falls State Park, and Lake Superior itself. Enbridge must be accountable for preventing spills, aquifer breaches, and damage to private wells and property.
- **We are experiencing the effects of climate change and we all need a clean energy future.** Continued investment in fossil fuel infrastructure is a concern without independent evaluations of alternatives and societal need. The environmental assessments produced so far do not demonstrate that this pipeline is truly needed from a societal standpoint. WGF's position on renewable energy is to move rapidly toward renewable energy development and away from fossil fuels.

Despite these major concerns, WGF recognizes that the regulatory authority of the Corps of Engineers and the Wisconsin Department of Natural Resources (DNR) for the L5R is limited in scope. WGF provides comments specific to those regulatory

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processes. However, both the Corps and DNR conduct broader environmental assessments (or EIS) under federal and state law (NEPA and WEPA). WGF comments that the scope of the Corps' DCDD, which contains the Environmental Assessment (EA), is unreasonably narrow and ignores many important factors to understanding the environmental and societal impacts of the L5R.

WGF disagrees with the Corps' determination in the DCDD that effects of the L5R will be minor and short term. We believe that an Environmental Impact Statement (EIS) is warranted. Our most significant criticism of the DCDD is its narrow focus. In this letter we cite numerous areas of the report that should have broader treatment, both in the environmental assessment (EA) and in the public interest review. Our recommendation is for the Corps to revise and expand the scope of the DCDD to meet these suggested topics and information needs. **The Corps should produce an expanded NEPA evaluation. Given the significance of concerns, we believe a full EIS is warranted, as elucidated in the following major points:**

- In 2022, WGF reviewed and commented on the State of Wisconsin Draft Environmental Impact Statement and the documents provided by Enbridge at the time. The possibility of oil spills in this region was a major topic of our comments on the state processes and continues to be our greatest concern. Although the Corps states that the operation of the pipeline is outside their authority, **the EIS should include a robust treatment of oil spill risks and response as part of its Public Interest Review.**
- State and Tribal 401 certifications will be needed prior to Corps regulatory decisions, which is acknowledged in the DCDD.
- WGF is concerned that the scope of the DCDD is unreasonably narrow. WGF recognizes the limits on Corps authority, but the truncation of the EA does the public a disservice, leaving out important aspects of information that should be part of the public interest review the Corps must conduct. A broader treatment of issues is needed in the EA (part of the DCDD) to facilitate a complete analysis of public interest (Section 7).
- One specific example of a narrow approach is on waterway crossings. The DCDD does not address watershed processes in the Lake Superior watershed that lead to slumping, flashy flow patterns, and unstable streambanks. The DCDD focuses on the narrow geography where the stream (or wetland) would be crossed. Yet watershed processes affect flows and conditions in those crossing locations. Ignoring those factors would result in permits without conditions or considerations to prepare for events that can be foreseen by past flooding and normal storm events.
- The U.S. Environmental Protection Agency (US EPA) in its comments to the Corps expressed "substantial and unacceptable impacts" to the Bad River and Kakagon Slough complex. These, along with tribal concerns, deserve a more fulsome description and response from the Corps.

WGF is glad to see that the latest Enbridge plan as described in the DCDD includes construction of additional pipeline rupture mitigation valves (7-10). However, the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations for oil and gas pipelines transmitted to the federal register in 2022 call for enhanced safety and environmental protections such as: modern rupture/spill detection and response equipment and methods meeting strict time requirements, rupture-mitigation valves, enhanced corrosion control standards to include surveys for interference of corrosion protection, internal and external corrosion monitoring, and corrosion protection testing; and requirements for inspections after extreme weather events to name a few. Given the nature of the topography and hydrology of the region and the important Waters of the United States (WOTUS) resources at risk, WGF suggests that additional detailed information, elaborating how this segment of Line 5 will meet or exceed PHMSA requirements be added to the document.

The following detailed comments by section should also be addressed and added to an EIS. Along with explanations for our recommendations, we have marked specific improvements that need to be added in bold.

1.3 Project Description

Comments related to Corps Jurisdiction for Waterway Crossings

On page 11 the Corps states that the applicant requested that all wetland and non-wetlands be jurisdictional under Section 404 and refers to section 1.5 for additional detail. However, subsequent text relating to which locations and activities will be regulated is confusing.

Table 1.3.3 lists the number of types of waterways (perennial, intermittent, ephemeral, etc.) proposed to be crossed subject to federal regulation by the COE under Section 404 of the Clean Water Act (CWA). There are a total of 72. Where are these waterbodies located? Since regulated waterway crossings and wetland fill is at the crux of the Corps authority, locations should be listed up front in the DCDD or referenced by page number in an appendix. What are the proposed construction methods that would be regulated by the Corps and what are the methods that would not be regulated by the Corps? **A table of that information, along with the number of waterways proposed to be crossed by each method would be helpful and should be included in this document and in an EIS.**

The text below Table 1.3.3 discusses the proposed activities that do not require Corps authorization, stating that non-wetland crossings that do not include a discharge regulated under Section 404 or crossings at waterbodies not considered WOTUS are not regulated by the Corps. As previously noted, the applicant requested that all waterbodies be considered to be under Corps jurisdiction.

The text on pages 14 and 15 describes bridges, and non-Section 10 waterway horizontal directional drilling (HDD) or direct pipe methods as not requiring Corps authorization. This section does not address blasting. Section 1.4 on p. 15 states that L5R would cross 72 waterbodies using open-cut (wet-trench) or dry crossing (flume or dam and pump methods). Presumably, Table 1.3.3 lists the number of waterways per flow regime crossed by wet-trench or dry crossing methods.

It is not clear from this section, or from later in the DCDD, whether the Corps considers waterway crossing methods that include blasting to be under their jurisdiction and would therefore be part of the DA permit and Corps oversight. Please clarify this point in an early section of the EIS. **We believe blasting as a waterway or wetland crossing method should be regulated by the Corps under Section 404 and more details should be provided on which locations and methods are under Corps jurisdiction.**

1.6 Proposed Compensatory Mitigation

The project considers impacts only at the precise location where fill is placed in the wetland, rather than impacts to hydrology and function to the wetland as a whole. **The Corps should evaluate those broader impacts and the permit should address those broader impacts. Wetland mitigation should occur within the HUC-12 watershed or smaller to address the role wetlands play in reducing runoff and flooding in the watershed.** Enbridge's proposal to secure wetland mitigation bank credits in the Lake Superior HUC 8 watershed does not help replace flood mitigation functions in the area impacted by the pipeline.

2.1 Determination of scope of analysis for NEPA

During the Wisconsin EIS process and Corps public input processes, many groups and individuals expressed compelling reasons why L5R should be considered in the broader context of: Line 5's future, federal commitments to address climate change, the proposed Mackinac tunnel, broader economic review and enhanced safety standards and oversight. WGF supports many of these arguments and finds the Corps' DCDD limited scope to inadequately address the public interest. Drawing the scope narrowly to include only L5R defies common sense for the public. One part of the pipeline certainly does not function without the other.

While we believe that this narrow approach is fundamentally flawed, we also argue that even in this narrowly defined review there are broader impacts in watersheds that should be incorporated.

Page 22 describes the regulated activities associated with WI L5R as separate crossings and "merely links" in a corridor type project. Using that analogy, we suggest that each link must be constructed to protect the public interest in the waterbodies and wetlands they

cross. The waterbodies and wetlands crossed by the links lie within and are affected by their watersheds. Waterway crossings and wetland fills must proceed in a manner to protect the public interest downstream and must be designed to withstand and take into account upstream forces such as flooding and erosion on the unstable soils and the topography in the Lake Superior watersheds. Flashy runoff patterns need to be considered and addressed in waterway crossings in particular. **The EIS should address the watershed processes in the Lake Superior basin that have been the subject of considerable interagency planning and conservation efforts over the last decades.** See the US EPA approved Marengo River watershed 9 key element plan for descriptions, references, and bibliographies (see <https://www.superiorrivers.org/the-marengo-river-watershed-partnership-project>). **This evaluation should then be used to inform appropriate permit conditions to protect the public interest.**

Later in the DCDD unplanned actions are often described as unforeseeable and thus not under Corps authority to consider. **We would argue that “unplanned” storms, sudden water level rises, floods, spills, aquifer frac-outs are not unforeseeable and should be addressed in the EIS.** Regulatory agencies, including the Corps should use their authorities to establish conditions to protect the public interest in the face of these events which are not commonplace but are foreseeable. In fact, extreme weather events resulting in flooding are predicted to increase in frequency under climate change projections for the region and therefore can be viewed as foreseeable. **These issues should be addressed in the EIS and permit conditions should be established to specify responses required of the applicant to these unplanned events.**

Page 22 states “Should the Corps determine from the EA process that environmental impacts of federal actions would be significant and cannot be mitigated below significance, the Corps would prepare an EIS.” WGF comments that unplanned events as described above would have significant environmental impacts warranting preparation of an EIS as we have stated previously.

3.0 Purpose and Need

The Corps should review and evaluate available information on the societal need for the project rather than narrowly defining the need solely as provided by the applicant. This analysis is needed to adequately support decision making for determination of public interest.

4.0 Public Involvement

This section outlines and summarizes comments and concerns that are either addressed in this report or appendix. In some instances, a topic is briefly responded to in the text or dismissed as outside the scope of the DCDD. Our comments here respond to both the appendix and rationales in the section.

Direct Indirect or Cumulative Impacts – see our comments already regarding the need to expand the scope of this review.

Purpose and Need – see our previous comments.

Water Quality - WGF shares the concerns raised by the Bad River Band of Lake Superior Chippewa and the US EPA about unacceptable risks to water quality raised during previous comment and review. See previous comments on this topic relating to broadened scope to include watershed processes and planning for impacts unplanned but not unforeseen events such as frac outs, spills, or floods. We also note that on page 28, the report states that public comments were received noting that a Section 401 process must be completed prior to an Army Corps permit decision. The DNR EIS and permit decision have not been completed as of this writing. Thus, we note that the Section 401 process is not completed and final decisions from the Corps should be taken after the state 401 certification that water quality standards will be met and the Bad River Band of Lake Superior Chippewa 40a certification that tribal water quality standards will be met at the reservation boundary. This should be cited here as it is in section 7.17.

Blasting: This section indicates that in 2022, the Corps requested information from Enbridge on the location of aquatic resources subject to blasting, measures to reduce impacts, and monitoring to inform restoration needed. The information provided is in Appendix 6 (Blasting Plan). We find that the Blasting Plan still does not identify the exact areas where blasting is proposed. Instead, it indicates the number of waterway or wetland crossings where blasting might be necessary and leaves blasting specifics up to contractors. **We request that site specific blasting plans be developed for each proposed location to provide for oversight by regulatory agencies.** In addition, the blasting plan contains only vague language about restoring contours of waterways. It is difficult to imagine that the act of blasting would not result in deposition of fill into waterways or wetlands and thus not be regulated under Section 404 of the CWA. **We maintain that a complete permit application should contain plans for each waterbody.**

Other issues raised by comments in Section 4 are dismissed as being outside of the Corps authority but raised to the applicant for voluntary response. This broad array of issues is appropriate for an EA or EIS regardless of whether the Corps has regulatory authority over them (e.g., greenhouse gases, oil spills, human trafficking). We also note that US EPA raised several concerns which are noted in the DCDD. It is appropriate to consider these other issues in the overall EIS; these concerns should inform Corps public interest determinations, permit decisions, and permit conditions, should permits be issued. See below our comments on section 6.3.3 impacts for specific suggestions.

6.3 Potential Impacts

6.3.1 Potential Impacts to Substrate

Page 52 describes that the Corps requested and received engineering and constructability assessments of each waterbody crossing. Yet the blasting section refers only to the applicant's blasting plan which is not specific to any particular waterbody and contains no site-specific plans or restoration plans. The vague statement that contours would be restored as possible, says nothing about substrate size, or impacts to subsurface flow. Blasting would alter the substrate size, would fracture substrate, and likely lead to downstream sedimentation. Altering substrate affects habitat and could interfere with spawning habitat in particular. Therefore, **WGF does not understand or agree with the Corps' conclusion in 6.3.1 that construction related effects to substrate would be minor and short term.**

Also, the conclusion that trench methods would have minor and short-term effects is not appropriate for conditions where unexpected high flow would occur. **Federal permits should include conditions that require planning and response for storm events, given the flashy watersheds that are prone to rapid high flow and flooding. This information should also be included in an EIS.**

6.3.3 Potential Impacts to Water

This section describes that the procedures in Enbridge's Water Quality Monitoring Plan (Appendix 8) would be conditioned in any permit granted. While water quality monitoring is important, monitoring is not management. It is important that permits be conditioned with procedures for responding to events that are unplanned, such as high water, leaks, spills, and aquifer breaches. We understand that the Corps has determined that HDD crossings, with the exception of the White River, a Section 10 water, are not covered by Corps authority. This translates into no federal regulation over an activity with the possibility of drilling fluid discharge and aquifer breaches.

WGF notes and agrees with the concerns raised by the US EPA about impacts to the Kakagon and Bad River Sloughs and to water quality. The list of water quality concerns raised by US EPA: potential discharge of sediments, fuel, lubricants, drilling fluids, and blasting contaminants need to be addressed in permits. In particular, if permits are issued, they should be conditioned with measures to address management actions to decrease risk of these discharges, which should not be dismissed as unforeseeable events. Although monitoring is important, it is not the only permit condition that should be specified. **Corps permits should address plans for prevention, response and remediation to unplanned events causing discharge of drilling fluids or aquifer breaches. These issues should also be addressed in an EIS.**

6.5.2 Wetlands

WGF supports the Corps statement that blasting in wetlands would require a site-specific plan. However, the DCDD confines analysis of all wetland impacts to the construction corridor. Permits should be conditioned to consider and minimize impacts to the wetland as a whole from any crossing method rather than focusing solely on the exact spot of the fill. This is particularly important for hydrology as noted in the Corps document. Impacts to wetlands as a whole will occur from trenching, and even maintenance of the ROW.

The Compensatory Wetland Mitigation Strategy (DCDD Appendix 4) acknowledges 733 wetlands will be crossed by the pipeline, yet claims that only 101.12 acres will be disturbed due to construction activities. This does not account for wetland impacts outside of the direct corridor. The acreages of impacted wetlands cited in the DCDD must be adjusted to include the acreage of each entire wetland crossed during construction.

Appendix 13 addresses the control and spread of listed invasive species by United States Department of Agriculture and the Wisconsin DNR. However, reed canary grass (*Phalaris arundinacea*) is ubiquitous along the pipeline route, particularly along roadsides and in agricultural areas. Reed canary grass is highly invasive where wetland conditions exist. Failure to address this unregulated invasive species will irreparably harm the floral diversity of the many high-quality wetlands along the pipeline route. Once introduced, this species is extremely difficult to control. It will also be problematic for wetlands that are converted from tree cover to open canopies required for the pipeline maintenance.

Analyses of wetland impacts should be expanded to include entire wetlands, as should their monitoring plans, pre- and post-construction, and post-restoration.

6.6.1 Municipal and Private Water Supplies

Aquifers

WGF has particular concern about the possibility of aquifer breaches not only from HDD as occurred at Line 3 in Minnesota, but from sheet piling for other construction activities. Locations of confined aquifers are not well known in the area. The applicant should have response plans for aquifer breaches and artesian conditions.

Use of HDDs and Aquifer Breaches:

The Corps states that aquifer breaches and release of drilling fluid are unforeseeable and outside of the Corps authority to regulate. However, these events have occurred recently (Enbridge Line 3 in Minnesota). Thus, we believe that these should be “foreseen” and measures to address aquifer breaches should be incorporated as permit conditions for HDD crossings within the Corps jurisdiction. In addition, aquifer breaches have the potential to cause sediment deposition to a WOTUS, which would not have occurred without the HDD activity. It is highly concerning that there would be no federal oversight or requirement for

plans to prevent and respond to aquifer breaches. **Plans for these unplanned but foreseeable events should be added to the EIS.**

Appendix 6 – Blasting Plan

Appendix 6 indicates 8 potential locations for stream crossings prepared by blasting (Table 4.1). It also indicates an estimated 41,400 feet of blasting over the course of the pipeline reroute. The DCDD states that the location and estimated footage of blasting are preliminary and subject to change. Enbridge is inappropriately handing over responsibility for site specific blasting plans and activities to blasting contractors. These plans have not been developed at this time, so they are unavailable to regulatory agencies or the public. The Blasting Plan states that site-specific plans would be developed by the contractor and submitted to Enbridge. We note the absence of a statement that the plan would be submitted to regulatory agencies. **Specific blasting plans should be submitted to the Corps and Wisconsin DNR. We believe this activity should require a Section 404 permit.** The Blasting Plan lists precautions to safeguard private property but indicates that Enbridge would compensate private landowners for damage to private wells. However, it also states that legal recourse for landowners would be with the blasting contractor. **Enbridge and the blasting contractor should be accountable for damage to private wells and private property.**

It is unclear from the DCDD whether the Corps considers blasting in a stream to be within the Corps authority. The DCDD states that at in-stream locations, the contractor will employ BMPs required by the regulatory agencies. How will BMPs be required if the stream crossing by this activity is not regulated by the Corps? If appropriate restoration is not included in a permit condition, what authority will the federal government have for enforcement?

Site specific plans to be developed by blasting subcontractors should be the core of a permit application under Section 404 for federal jurisdiction and Chapter 30 Wis. Stats. for state authorities. Permits should not be granted without those plans and appropriate restoration plans. In that manner, regulatory agencies can apply oversight and appropriate conditions for those activities.

We note and concur with the concern raised by the USEPA about blasting residuals entry into waterways and appreciate that insight. **Monitoring plans need to include those chemicals components and responses should residuals present risks to waterway habitats.**

6.6.3 Water Related Recreation

The Army Corps should incorporate information on how Wisconsin's felony trespass law (SB 386 AB 426 as cited in section 7.5) regarding oil and gas pipelines and how the re-route would impact tribal and non-tribal recreationalists.



7.0 Public Interest Review

As previously stated, we believe that the narrow scope of the DCDD does a disservice to the public interest review. We recommend providing more complete information for public understanding and as an underpinning for permit decisions.

7.3 Economics

The EIS should include data on economic impacts from aquifer breaches, spills, and projections for economic shifts and changes from climate adaptation and change.

7.5 General Environmental Concerns

Greenhouse Gas Emissions – At the least, this section should note the broader concerns with regard to emissions as noted in many public comments.

Hazardous Materials and Oil Spills – These sections take a narrow focus on Corps authority. We again suggest site specific details on prevention under PHMSA regulations.

We want to thank the Corps for this opportunity to comment on the DCDD and hope that these recommendations are helpful. We appreciate the challenges regulators face in these complicated projects and your work to protect the public interest and waters under your jurisdiction.

Sincerely,

Meleesa Johnson
Executive Director, Wisconsin's Green Fire