

January 20, 2021

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Ms. Salawater,

The League of Women Voters of Ashland and Bayfield Counties (LWV-ABC) thanks you for this opportunity to comment on the antidegradation decision facing the Tribe. We have many concerns about the impacts of Enbridge's proposed project to place fill material below the Ordinary High Water Mark of the Bad River (Mashkiiziibii). The negative impacts of fill and riprap within the riparian zone as well as the effects associated with the project outside of the riparian zone (such as road construction through undeveloped terrain to allow access of heavy equipment and transport of fill materials) must be considered carefully.

We recognize the cultural importance of Mashkiiziibii to the Tribe and the designation of the River as an Outstanding Tribal Resource Water. Such designation allows no new or increased discharges or alterations of the background conditions, with exceptions as specified. Additionally, we recognize the Tribe's authority to issue or deny permits for temporary degradation under Section 401 of the Clean Water Act (CWA).

Our concerns include the potential for destruction of wood turtle (*Glyptemys insculpta*, a State Threatened species) habitat and the export and intensification of flood waters downstream, especially during extreme rain events, with all of the concomitant damage to river banks and water quality. Given the widely recognized recent increase in extreme storm events (both intensity and frequency), the potential for downstream degradation is compounded should such an event occur during the course of the fill/riprap project, especially before it is complete. Anecdotal evidence exists for incomplete projects in the southwestern part of Wisconsin being destroyed, exacerbating downstream flooding, during the 2018 extreme rain event. Additionally, anecdotal and published reports have documented the impermanence of riprap – even large boulders – during extreme flooding events.

Published scientific studies have addressed the problems of riprap, pointing out the values of natural stream courses and making recommendations. Examples include:

- minimize the use of shoreline riprap to stabilize shorelines because such structures hinder movements of reptiles and amphibians and can even trap and kill them;
- natural meandering of streambeds and the movement of sand and gravel provide basking and nesting sites for turtles and allow for natural ecological processes to occur;

- small amounts of riprap can have disproportionately large negative effects on river fish species assemblages;
- hardened structures designed to stabilize river banks can cause increased flood velocity downstream; and
- river systems experience bank erosion as part of the natural disturbance regime.

Our specific concerns include not only the direct effects of fill and riprap below the OHWM, but also the effects of heavy equipment and transport of 3700+ cubic yards of fill and riprap across stretches of roadless areas. Such access could adversely affect wetlands, seeps, ancillary streams (permanent, intermittent, and ephemeral), and other sensitive habitats.

If the Bad River Tribe allows Enbridge to proceed with their riprap project, we highly urge the Tribe to demand the following of Enbridge, at a minimum:

- Adhere to the Wisconsin Department of Natural Resources' guidance specific to wood turtles ([Wood Turtle \(*Glyptemys insculpta*\) Species Guidance: identification, life history, project screening, avoidance measures, and more. \(wi.gov\)](#)) including:
 - filling voids in exposed rock above OHWM with soil and seeding with native plant species or gravel of appropriate size such that hatchling turtles do not become trapped between rocks;
 - timing of the project to occur during winter snow cover;
 - minimizing work during upland foraging areas according to specific times of year and disturbance distances.
- Prohibit disturbance of potential nesting and over-wintering hibernation habitat of wood turtles at all times of the year.
- Conduct post-construction monitoring to ensure river bank stabilization along the entire project.
- Avoid forested seep communities and wetlands in the access to and transport of fill and riprap materials to the project site.

We recognize the limited value of riprap in particular circumstances, for example to protect bridges or valuable agricultural land where land use changes have already profoundly affected the natural landscape. In the present case, however, the landscape is undeveloped and the only infrastructure is Enbridge's Line 5 pipeline, which should be decommissioned and removed.

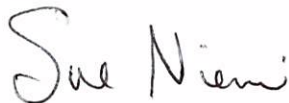
It seems as though Enbridge is grasping at straws. The Bad River Band has made it abundantly clear that their desired outcome is decommissioning and ultimately, the removal of Line 5 from Reservation lands. The LWV-ABC supports the Tribe in this demand.

The resolution passed by the LWV-ABC and the comments we submitted to the Wisconsin Department of Natural Resources regarding the scoping for an Environmental Impact Statement are relevant to this proposal by Enbridge within Bad River Reservation borders. Please see our resolution at <https://www.lwvabcwi.org/issues-advocacy> and our full set of comments at <https://www.lwvabcwi.org/latest-news/2020/9/14/lwvwi-comments-to-the-dnr-on-the-enbridge-line-5-environmental-impact-statement-and-waterways-permitting-process>.

The League of Women Voters of Ashland and Bayfield Counties continues to advocate for the decommissioning and removal of Enbridge Line 5 as the ultimate solution to the threats posed by the antiquated line. As long as Line 5 continues to operate, maintenance requirements are ongoing (including helicopter flights and integrity digs) and the threat of a spill remains. As long as Line 5 continues to operate, the Bad River Watershed, and ultimately the rice beds of the Kakagon and Bad River Sloughs and Lake Superior itself, remains under threat of a catastrophic spill. As long as Line 5 continues to operate, all of the up-watershed effects we have previously documented threaten the integrity of the entire watershed.

The League of Women Voters of Ashland and Bayfield Counties supports the Tribe in its determination to enforce antidegradation policies as described in its Water Quality Standards. We understand the difficult position the Tribe is in. If our concerns cannot be addressed adequately, then we recommend denying the permit. Should the Bad River Tribe decide to permit the activities proposed by Enbridge, we hope you will take our concerns under serious consideration. Post-construction monitoring and holding Enbridge to account is extremely important.

Sincerely,



Sue Niemi

President

League of Women Voters of Ashland and Bayfield Counties

Supporting documentation:

Bodie, J.R. 2001. Stream and riparian management for freshwater turtles. *Journal of Environmental Management* 62:443-455.

Florsheim, J.L., J.F. Mount, and A. Chin. 2008. Bank Erosion as a Desirable Attribute of Rivers
BioScience 58(6): 519.

Galois, P. et J. Bonin. 1999. Rapport sur la situation de la tortue des bois (*Clemmys insculpta*) au Quebec, Faune et Parcs Quebec. Direction de la faune et des habitats, Quebec, 45p.

Kingsbury, B.A. and J. Gibson. (editors). 2012. Habitat Management Guidelines for Amphibians and Reptiles of the Midwestern United States. Partners in Amphibian and Reptile Conservation Technical Publication HMG-1, 2nd Edition. 155 pp.

Lyons, J. 2005. Longitudinal and lateral patterns of fish species composition and biotic integrity in the Lower Wolf River, Wisconsin, a relatively undegraded floodplain river. *Journal of Freshwater Ecology*, 20(1):47-58.

Moll, D. & E. O. Moll. 2004. *The Ecology, Exploitation, and Conservation of River Turtles*. Oxford University Press. pgs. 262-263.

Wisconsin Department of Natural Resources. [Wood Turtle \(*Glyptemys insculpta*\) Species Guidance: identification, life history, project screening, avoidance measures, and more. \(wi.gov\)](#)