

# Responsiveness Summary

Enbridge Energy, Limited Partnership  
Line 5-Straits of Mackinac

Part 303, Wetlands Protection and Part 325, Great Lakes Submerged Lands

Submission Number: HNY-NHX4-FSR2Q

January 28, 2021

Enbridge Energy, Limited Partnership (Enbridge) applied for a permit under Part 303, Wetlands Protection, and Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The proposed construction of the tunnel and installation of the pipeline and associated infrastructure includes fill and placement of structures in wetlands and Great Lakes bottomlands. The application documents are available to the public via the MiWaters database. Updated application documents are maintained and available in MiWaters at <https://www.michigan.gov/line5/0,9833,7-413-100616-550690--,00.html>.

A public comment period for the application occurred via MiWaters. An EGLE email box was created to receive comments on the application and was maintained until the public comment period ended on October 19, 2020. Two public information sessions on the resource application were held on September 10, 2020, beginning at 1:00 pm and September 21, 2020, beginning at 6:00 pm. Two public hearings were held on the permit application on October 1, 2020, beginning at 1:00 pm and on October 8, 2020, beginning at 6:00 pm.

Thousands of comments and questions were received via the above-mentioned mediums and are summarized and addressed below.

Please note the permitting process for the resource permit does not include reviewing the design and specifications of the tunnel or pipeline. The resource review process is strictly based on if the proposed activity meets the program-specific statutory criteria; specifically, impacts to bottomlands and impacts to wetlands. Please also note that the permitting process does not address the decommissioning of the existing Line 5 dual pipelines.

## **Application Updates**

*Several commenters expressed concerns that EGLE is allowing additional information to be submitted by the applicant, that the application is incomplete, and a new application should be submitted.*

EGLE Response: Enbridge submitted a Resources permit application initially on April 8, 2020. EGLE requested additional information which was submitted in multiple revisions and additions to the application materials. EGLE determined that the application was complete on June 8, 2020. Enbridge provided an additional set of revised information on July 21, 2020, and EGLE issued the Public Notice of this application on July 31, 2020. The normal process for review of applications in the Resource Programs, including applications submitted under Part 303 and Part 325 of the NREPA, is that EGLE issues a Public Notice of the application upon determination of completeness. The public and technical comments received may illuminate concerns or issues that require further review or additional information from the applicant. EGLE will often contact the applicant to request additional information, or to request additional consideration of alternatives.

There is often significant back and forth correspondence between EGLE and the applicant as EGLE completes the review of the application, evaluation of the alternatives analysis, and review of statutory criteria. In the Resources Program this happens concurrently with and after the Public Notice period. It is only after this process is completed that EGLE determines whether or not a permit can be issued.

### **Duration of the Permit**

*Several commenters expressed concerns and asked questions about what happens when the permit expires.*

Permits issued pursuant to Part 303 and Part 325 of the NREPA are valid for five years. If the permitted impacts of the project were not completed within those five years, the applicant would need to apply for another permit, and go through the full review process again.

### **Native American Treaty Rights**

*Several comments were included that expressed concern over the potential for this project to impact Native American Treaty Rights.*

EGLE has engaged in consultation with several tribes and acknowledges that under the 1836 Treaty of Washington and Consent Decrees with the State of Michigan, Native American tribes have reserved rights to fish, hunt, and gather in the ceded territory, including areas in and around the Straits of Mackinac. Under Part 303 and Part 325 of the NREPA, EGLE only has authority over the construction activities associated with this project, not the operation of the tunnel or utilities. The construction activities associated with the tunnel project below the Straits of Mackinac do not authorize impairment of, and are not anticipated to adversely affect fish, wildlife, or habitat, nor the ability to hunt, fish, or gather in the Straits. The wetland fill and placement of structures reviewed under Part 303 and Part 325 have been minimized, and will not adversely affect fish, wildlife, or habitat, nor the ability to hunt, fish, or gather in the Straits of Mackinac.

### **Archeological Sites, Historic, and Cultural Resources**

*Several commenters stated concerns about potential archeological sites, and historic or cultural resources in the area. Several commenters also expressed concern about potential impacts to these resources, citing the laws protecting these resources.*

EGLE provided the application materials to the State Historic Preservation Office (SHPO) and is continuing to coordinate with them on their review. The SHPO provided a letter requesting additional information to be provided; specifically, a professional archeological survey of additional areas, as well as other items. EGLE provided this letter to Enbridge and requested a response to this request to enable the SHPO to complete their review. Enbridge provided a response to the SHPO letter, as well as some additional survey information on December 18, 2020, which has been provided to the SHPO. The SHPO was provided copies of the white papers developed by McMillen Jacobs Associates for EGLE, addressing Geotechnical Investigation, Risk Mitigation, Vibrations, Slurry Containment, Gas Encounters, and Collapses. EGLE also arranged a meeting with McMillen Jacobs Associates and the SHPO to review the findings of these white papers.

The following is the proposed permit condition provided by the SHPO regarding this application:

The Straits of Mackinac bottomland and shore are notable for the presence of historic properties, such as terrestrial and bottomland archaeological sites (including historic aircraft and shipwrecks), submerged paleo landscapes, cemeteries and isolated human burials, significant architecture and objects, historic districts, National Historic Landmarks, and traditional cultural properties and landscapes. The United States Army Corps of Engineers (USACE) has federal permitting authority over this project and is required to comply with Section 106 of the National Historic Preservation Act of 1966, as amended (Section 106). Section 106 requires federal agencies to consider the effects of their undertakings on historic properties in consultation with the SHPO, consulting Tribes, and other stakeholders. Any adverse effects on historic properties must be avoided, minimized, or mitigated. The SHPO recommended additional surveys to identify historic properties in the project area (November 10, 2020). This recommendation will remain under consideration during the Section 106 consultation process. Note that historic properties on state-owned land and the state-owned bottomland are the property of the State of Michigan. Archaeological surveys that may be proposed on state-owned land and the state-owned bottomland will require a Michigan Department of Natural Resources (MDNR) permit to Perform Archaeological Exploration on State-Owned Land.

### **Current Pipeline Remains a Threat**

*Several comments received noted that the project as proposed does not include removal of the existing pipeline infrastructure, and that they continue to pose a threat to the Great Lakes.*

It is correct that the proposed project does not include removal of the existing pipeline. EGLE requested that Enbridge provide additional information on the anticipated timeline for proposed removal of the existing pipeline. Enbridge provided a response that there are plans to remove the existing pipelines after the tunnel is constructed and is operational, but that the application for that project will be submitted separately from this application. The pipeline removal methods, and associated impacts, would need to be reviewed under a separate application in the future, and review of that application will include agency coordination, public notification, and tribal consultation appropriate for the proposed impacts.

### **Great Lakes Coastal Wetlands Impacts**

*Several comments stated that the proposal included impacts to Great Lakes Coastal Wetlands, including very high-quality coastal wetland areas.*

The proposed wetland impacts include 0.13 acres of fill to be placed in forested coastal wetland along Boulevard Drive. The original plans included fill on both the waterward side and the inland side of Boulevard Drive but were later revised to only include fill on the inland side of Boulevard Drive. The change was made to avoid impacts to the higher quality coastal wetlands on the waterward side, which are directly connected to the Great Lakes. The coastal wetlands in this area are high quality and high functioning wetlands, with diverse assemblages of native vegetation and animals. However, some

portions of the wetland have been previously impacted by dredging of a roadside ditch, and by the initial construction of the road which altered the connectivity and functions of the wetland. The permit review criteria in Part 303 of the NREPA includes consideration of feasible and prudent alternatives to avoid or minimize impacts to wetlands, to the greatest extent possible.

The current proposed wetland fill will be placed in a section of wetland that is hydrologically connected to the Great Lakes through subsurface and equalization culverts. This area has been partially impacted in the past through dredging of a roadside ditch, and the specific impact locations are primarily forested and open water ditch wetlands. Although this area is coastal wetland, it is not a rare and imperiled Great Lakes Marsh community, as defined by Part 303 of the NREPA. EGLE did request Enbridge consider alternatives that would avoid and minimize impacts to Great Lakes coastal wetland, through consideration of access from other roads, or additional measures to reduce or avoid wetland fill in this location. Enbridge modified the plan to avoid fill placement on the waterward side of Boulevard Drive and limited the fill only to the inland side of the road. Based on the information Enbridge has provided, EGLE has determined that the wetland impacts proposed have been minimized.

### **Rare Species Impacts and Mitigation**

*Several commenters stated concerns that the wetland and submerged land impacts would have a detrimental effect on threatened and endangered species, including not only the Houghton's Goldenrod, Dwarf Lake Iris, and Huron Tansy as identified in the public informational materials, but also other terrestrial and aquatic species such as Lake Sturgeon, Rufa Red Knot, Piping Plover, or other fish, crustaceans, waterfowl, shorebirds, raptors, etc.*

EGLE's review of the project includes screening for potential impacts to rare species, and coordination with the MDNR and U.S. Fish and Wildlife Service (USFWS) as appropriate. EGLE has provided copies of the Public Notice and application materials to these agencies, as well as the proposed mitigation plans Enbridge has developed for impacts to rare species. The USACE has federal permitting authority over this project and is required to comply with the federal Endangered Species Act (ESA) prior to permit issuance. In accordance with Clean Water Act's implementing regulations (40 CFR § 230.31(c)), where consultation with the USFWS occurs under section 7 of the ESA, the USFWS conclusions concerning the impact(s) of the discharge on threatened and endangered species and their habitat shall be considered final. The permit for this project includes conditions requiring the permittee to comply with state and federal rare species regulations, including obtaining any permits or following any requirements by the USFWS or the MDNR.

### **Wetland Impacts Alternatives**

*Many commenters stated that the project is not wetland dependent and expressed concern that Enbridge has not sufficiently evaluated potential alternatives that could avoid or minimize impacts to wetlands.*

EGLE reviewed the proposed project under the review criteria in Part 303 and Part 325 of the NREPA. This includes consideration to whether the project is wetland dependent, or whether there are feasible and prudent alternatives. The state permit application and

process require the applicant to provide a detailed alternatives analysis, to demonstrate that alternatives have been fully evaluated and the proposed impacts to the resources have been avoided or minimized to the extent possible.

EGLE requested additional information regarding consideration of feasible and prudent alternatives from Enbridge, specifically regarding the wetland impacts along Boulevard Drive. Enbridge provided sufficient information which demonstrated that the no other feasible and prudent alternatives exist, and wetland impacts have been minimized to the extent possible.

### **Alternate Routes That Do Not Go Through the Straits of Mackinac**

*Many commenters stated that the alternatives analysis does not consider alternate pipeline routes that do not cross the Straits of Mackinac.*

The project purpose as included in the application is to construct an underground tunnel in accordance with the "Tunnel Agreement" that was executed by Enbridge and the Tunnel Authority on December 19, 2018. That Agreement was entered in furtherance of Public Act 359, through which the State of Michigan established the Authority and delegated to it the right to acquire, construct, maintain, improve, repair, and manage a utility tunnel across the Straits of Mackinac. In addition, it is included that the tunnel would extend as near as practicable to the existing Enbridge Line 5 station (North Straits Facility) located on the north shoreline of the Straits of Mackinac to an opening point as near as practicable to Enbridge's existing Line 5 Mackinaw Station located on the south shoreline of the Straits of Mackinac. The alternatives analysis for project reviews on Part 303 and Part 325 of the NREPA must be commensurate with the stated project purpose and must consider alternative locations that would reasonably achieve the stated project purpose. Because the project purpose is limited to construction of a tunnel connecting the existing Line 5 facilities in the Upper Peninsula and the Lower Peninsula, the alternatives analysis which considers different alignments within the Straits of Mackinac is acceptable for the purposes of this review.

The proposed activity is a tunnel constructed below the Straits of Mackinac to house a pipeline to replace the current pipeline which runs through the Straits of Mackinac to connect pipeline infrastructure in the Upper Peninsula to pipeline infrastructure in the Lower Peninsula.

In its alternatives analysis, Enbridge notes the following alternatives were explored:

"That Alternatives Report considered installing a replacement segment across the Straits utilizing horizontal directional drilling (HDD) methods or by placing a pipe inside a larger, secondary containment pipe, which would be buried in a trench near the shore and laid on the remaining lakebed covered with rock. The HDD method was rejected in the Alternatives Report because it was not technically feasible. The latter method was rejected because the potential environmental impacts during construction would be much greater than replacing the Dual Pipelines with a pipeline replacement segment within a tunnel."  
(GLTP\_AltAnalysis\_20200406\_Final[1].pdf)

EGLE agrees with Enbridge that horizontal direction drilling is infeasible in this situation. EGLE also agrees that burying a pipeline in the lake bottom or covering a pipeline with rocks along the lake bottom also present significant risks to public uses of the waters of the Great Lakes and is therefore not a prudent and feasible alternative to the dual pipelines.

Transporting oil or hydrocarbon-based products on the lakes themselves via barge or vessels is also not a feasible and prudent alternative due to the risks presented during loading, unloading, or transportation on the water.

Commenters have suggested that Enbridge should be required to explore the use of other pipeline infrastructure located throughout the region and abandon Line 5 in its entirety. The Enbridge pipeline system does not have excess pipeline capacity that would be necessary to handle the product currently flowing through Line 5. We find the proposed activity to be limited to connecting pipeline infrastructure in the Upper Peninsula to pipeline infrastructure in the Lower Peninsula and therefore did not require Enbridge to explore options beyond those included in its alternatives report.

We find the tunnel project has the least impact on the environment of the alternatives available for the proposed activity.

## **Public Trust**

*Several comments received included concerns regarding impacts to the public trust.*

The waters of the Great Lakes are public trust resources which the state has a duty to protect, and the state through the MDNR has previously decided that the current operation of the dual pipelines violates the public trust doctrine. EGLE agrees with and adopts the finding of the MDNR.

The construction activities proposed under Part 303 and Part 325 of the NREPA for this application include wetland fill and placement of structures and fill on Great Lakes bottomland and construction of a tunnel beneath the lakebed in the Straits of Mackinac, specifically. Feasible and prudent alternatives have been thoroughly evaluated to ensure that impacts to wetlands and bottomlands have been minimized through the location and methods. The tunnel itself will be placed in the bedrock, with depth to the tunnel below grade ranging from 60-370 feet. The proposed project does not authorize adverse impacts to the lakebed and is not anticipated to impact navigation, hunting, fishing, or water quality as protected under the Public Trust doctrine.

## **401 Certification**

*Some comments provided concerns that EGLE must consider potential water quality impacts from this project, including both planned and potential impacts over its entire life.*

EGLE's review of impacts under Part 303 and Part 325 of the NREPA include consideration of impacts to water quality and state water quality requirements.

Factors considered include impacts to the public trust and designated uses, including fisheries, navigation, recreation, and aquatic life.

## **Dark Sky Park**

*Some commenters expressed concerns over the potential for the construction to disrupt the Headlands International Dark Sky Park.*

This issue is outside the purview of this application review, EGLE does not have any authority over this.

## **Boulevard Drive**

*Comments were received that expressed concerns about effects to the residents from the construction vehicles and traffic.*

EGLE does not have authority under Part 303 and Part 325 of the NREPA over the effects of construction vehicles and traffic concerns. That is outside the purview of this application.

## **Project Is Not in the Public Interest**

*Several comments were received expressing that the project is not in the public interest, specifically citing concerns about the potential for accidents or disasters during construction, potential for future maintenance work, the appropriateness of locating a utility crossing in the Straits of Mackinac, and the perspective that approval of this project will further the life of an old and degrading fossil fuel pipeline that has many other high risk locations with the potential for natural resource disasters.*

"Section 30311. (2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity . . . The following general criteria shall be considered:

- (a) The relative extent of the public and private need for the proposed activity.
- (b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity."
- (c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.
- (d) The probable effects of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed.
- (e) The probable effects on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
- (f) The size of the wetland being considered.
- (g) The amount of remaining wetland in the general area.
- (h) Proximity to any waterway.
- (i) Economic value, both public and private, of the proposed land change to the general area."

The review of impacts under Part 303 and Part 325 of the NREPA is limited to the wetland fill and placement of structures on bottomland, tunnel construction, and does not include the operation of the tunnel itself. Some of the cited concerns in these comments

are not part of the purview of EGLE's review of an application under Part 303 or Part 325 of the NREPA and are not specific to the identified project purpose. See other sections of this document that speak to this concern. EGLE has considered the concerns raised by comments that this project is not in the public interest, and several are addressed specifically in other sections of this document, including the availability of feasible and prudent alternatives.

### **Project Is in the Public Interest**

*Several comments were received expressing that the project is in the public interest, specifically citing that the approval of the tunnel will eliminate the extreme threat posed by the operation of the existing dual pipelines crossing the Straits of Mackinac, the need for fuel to be provided to residents and businesses in the Upper Peninsula and Wisconsin, the jobs this project will provide, and the taxes paid to the state and local governments by Enbridge, etc.*

The review of impacts under Part 303 and Part 325 of the NREPA is limited to the wetland fill and placement of structures on bottomland, tunnel construction, but does not include operation of the tunnel itself. EGLE has considered the concerns raised by comments that this project is in the public interest, and several are addressed specifically in other sections of this document, including the availability of feasible and prudent alternatives. EGLE has determined that the benefits provided by the project, including consideration of the unacceptable risk of the current dual pipelines, outweigh the potential harm from the permitted wetland and bottomlands impacts, and the project is in the public interest.

### **Environmental Impact Statement Should Be Provided By EGLE**

*Several comments received in writing, as well as presented in the public hearing, included statements that an Environmental Impact Statement should be provided by EGLE.*

EGLE reviews applications under state law, in this case under Part 303 and Part 325 of the NREPA. The review process does not include an Environmental Impact Statement, which refers to a document and process specific to federal review under the National Environmental Policy Act.

### **Climate Change**

*Some comments that expressed concerns about the project as it relates to climate change, and specifically that approval of this permit will extend the life of an old and degrading fossil fuel pipeline, rather than encouraging sustainable energy sources.*

EGLE agrees with the concerns regarding the ongoing use of fossil fuels versus sustainable energy sources, however that issue is outside the purview of this application.

The review of this application under Part 303 and Part 325 of the NREPA is limited to the construction activities including fill and placement of structures in wetland and Great Lakes bottomlands but does not include the operation of the pipeline or the fate of products transported by the pipeline.



## **Mitigation Should Be Required If a Permit Is Issued**

*We received several comments that wetland mitigation should be required for any wetland impacts that are unavoidable.*

EGLE had also expressed this position to Enbridge prior to submittal of this application, and specifically requested that Enbridge provide mitigation for unavoidable wetland impacts totaling 0.13 acres in the December 8, 2020 correspondence. Enbridge has provided a mitigation plan which includes permanent protection of approximately 1.3 acres of existing high quality coastal wetland, and 0.26 acres of wetland mitigation through the purchase of mitigation bank credits.

## **Tunneling Process**

*Several comments were received regarding the construction of the tunnel including the geological makeup of the lakebed and overall safety concerns of placing a tunnel under the Straits of Mackinac.*

EGLE engaged the Michigan Department of Transportation and McMillen Jacobs Associates to provide tunneling expertise consultation on the review of the tunnel design and tunneling process as it relates to our review of the current permit applications. McMillen Jacobs Associates developed a series of white papers addressing specific questions regarding this review, which EGLE has relied on in our review of this project. Specifically, the white papers address:

- Geotechnical Investigation
- Risk Mitigation
- Vibrations
- Slurry Containment
- Gas Encounters
- Collapse Potential

White papers are available at <https://www.michigan.gov/line5/0,9833,7-413-100616---,00.html>.