IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS OF THE BAD RIVER RESERVATION,

Plaintiff,

v.

ENBRIDGE ENERGY COMPANY, INC., and ENBRIDGE ENERGY, L.P.,

Defendants.

ENBRIDGE ENERGY COMPANY, INC., and ENBRIDGE ENERGY, L.P.,

Counter-Plaintiffs,

v.

BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS OF THE BAD RIVER RESERVATION and NAOMI TILLISON, in her official capacity,

Counter-Defendants.

Case No. 3:19-cv-00602-wmc

Judge William M. Conley

DECLARATION OF NAOMI TILLISON

I, Naomi Tillison, declare the following on the basis of personal knowledge to which I am competent to testify:

1. I have served as the Director of the Mashkiiziibii Natural Resources Department of the Bad River Band of the Lake Superior Tribe of Chippewa Indians (MNRD) since December 2016. Prior to that time, since October 2007, I held roles within the MNRD Water Program. I hold a Master of Science degree in Environmental Engineering (2005) and a Bachelor of Science degree in Environmental Engineering (2002), both of which I received from Michigan Technological University.

2. In my role as Director, I oversee a Department of twelve distinct environmental protection and resource management programs and over 50 positions. As Director, I am also ultimately responsible for MNRD's permitting and oversight of projects that impact the Reservation's waters, wetlands, and natural resources, including Enbridge's projects. I am also responsible for collaborating and communicating with Enbridge in connection with such projects. I am personally familiar with all Enbridge projects on the Reservation dating back to 2007, when I first joined the Department.

The History of the Check Valve Project

3. MNRD is very concerned about the risk and potential consequences of a rupture of Line 5 at the Bad River meander.

4. As early as 2014, the Band asked Enbridge to develop and implement a project to install a valve on the pipeline to reduce the possible amount of oil that could be released during a rupture of Line 5 into any one of the several watercourses (and ultimately Lake Superior) that the pipeline intersects as it crosses the Reservation.

5. Since the December 2022 court-ordered meetings with Enbridge about the installation of valves on the Reservation, MNRD and Tribal Council repeatedly urged Enbridge to move forward with a project to install a one-way "check" valve to protect the Bad River and Lake Superior and have dedicated substantial effort to make the project happen.

6. Beginning in a meeting about the check valve in December 2022, I pressed Enbridge for a proposal to install the valve during the winter of 2022/2023. Enbridge refused.

7. Then, in January 2023, MNRD and its expert engineering contractors, Wright Water Engineers (WWE), met with Enbridge to tell Enbridge what to include in its application for a check valve to facilitate permitting, and I repeatedly urged Enbridge to submit that application to begin the statutory review timeline.

8. But Enbridge did not submit its application for another four months, until April 2023, and several more months passed before Enbridge completed that application with key information that we told Enbridge from the beginning was needed to permit the project.

9. Enbridge gave several reasons, which regularly changed as time passed, for why it could not install the project each time we asked.

10. In March 2023, Enbridge informed MNRD for the first time that it would not shut down the pipeline just for this work but that it would only install the valve if the work coincided with a separately planned outage. It also told MNRD that it would not start work until August or September 2023.

11. To ensure construction could occur in that new window specified by Enbridge, MNRD remained in close coordination with Enbridge throughout the permitting process, including to coordinate the various authorizations and actions that had to take place before work could begin.

12. In mid-August 2023, following detailed review and analysis by MNRD staff and WWE, MNRD recommended to Tribal Council that the check valve was necessary to reduce the risk of catastrophic rupture at the meander and that it could be authorized under the Band's water laws. Tribal Council adopted MNRD's recommendation and issued the necessary permits at that time.

13. Once the permits were issued, however, Enbridge did not move forward.

14. Over the course of several technical meetings with MNRD and its contractors in the months that followed, Enbridge did not respond to my requests for a date by which Enbridge would begin work.

15. Five months later, in January 2024, Enbridge stated for the first time that it would not move forward because of a condition requiring that the pipeline be purged during the work. I had shared and discussed that condition with Enbridge previously, before it was incorporated into the August 2023 permits. I had done so specifically to ensure that the condition would not prevent the project from moving forward. Enbridge had not at that time expressed any reservations about moving forward with the check valve if that were a condition of approval.

16. Subsequently, I informed Enbridge that MNRD was working to remove the purge condition, and I repeatedly asked Enbridge to begin work immediately. Enbridge responded that unspecified potential "road restrictions" would make installation impossible before the 2024 spring flooding, despite MNRD's offers to facilitate the waiver of any such restrictions on the Reservation given the urgency of the project.

17. Enbridge also said that necessary tree clearing and survey activities and associated BIA permits could not be coordinated in time. MNRD responded by coordinating those permits and expediting those activities.

18. Ultimately, the check valve was installed in August 2024.

19. The project would not have occurred if the Band, MNRD, and its experts had not spent significant time and money to help Enbridge develop the project, including by proposing a site and the type of valve to be used to make the project permittable, locating check valves when Enbridge claimed none were available, working with Enbridge through several technical meetings to develop a permittable application and plan, and expediting tree clearing and obtaining BIA permits for the project.

20. From conception through ongoing remediation, the check valve project has consumed thousands of hours of work by MNRD staff and over 800 hours by WWE.

Check Valve Installation

21. The installation of the check valve was a major undertaking. It required the construction of 1.6 miles of temporary roadway to enable heavy machinery to access the remote Reservation site where the check valve would be installed. This resulted in the destruction or impairment of over 4 acres of wetlands and streams over the course of the 3 months of construction. The project resulted in longer-lasting impacts to wetlands, streams, and wildlife than proposed by Enbridge, with the restoration phase of the project still continuing into 2026. Much of the damage is being repaired, through restoration efforts under the guidance, oversight, and support of MNRD and its experts. But much of the damage is irreversible.

22. **Figures 1** to **7**, below, depict the check valve project temporary roadway; affected wetlands and watercourses; the check valve during installation; and the check valve project staging area.

Fig. 1: Check Valve Temporary Access Road

Fig. 2: Heavy Machinery on Check Valve Temporary Access Road

Fig. 3: Example of Wetlands Damage Along Access Route

Fig. 4: Example of Watercourse Pollution Along Access Route

Fig. 5: Check Valve During Installation

Fig. 6: Portion of Check Valve Staging Area

Fig. 7: Spoil Pile at Check Valve Staging Area

23. The disruption resulting from the check valve installation affected wildlife, including the rearing habits of wolves, the movement patterns of game, and crucial amphibian habitat, and it affected the ability of tribal members to hunt and gather across a significant portion of the Reservation.

24. Ultimately, however, the installation of the check valve has been of vital importance to the Band. It dramatically reduces the maximum amount of oil released in a rupture of Line 5 at the Bad River by almost 2/3 (from approximately 913,000 gallons to 325,500 gallons).

The Log Jack Project

25. Even with the check valve in place, a rupture at the Bad River can release up to 325,500 gallons of oil.

26. In Spring 2023, at the request of then-Tribal Chairman, Robert Blanchard, WWE developed a concept for a log jack project to further reduce the risk of rupture while also avoiding permanent impacts and pollution to the Bad River, and Enbridge was invited to work with MNRD and WWE to develop and implement a complete project.

27. Following extensive technical collaboration among MNRD, WWE, Enbridge, and Enbridge's contractors over the ensuing months, a final, permittable project plan was developed.

28. Implementing the project was a significant undertaking.

29. Around 40 acres of mature forest in the Bad River watershed were clear cut to supply the timber for the existing log jacks.

30. 145 large jacks built of logs up to 12 inches in diameter enclosing boulders of roughly 6 tons, as well as 125 smaller jacks made of logs up to 8 inches in diameter and boulders of roughly 1.5 tons, were built at a nearby off-Reservation site.

31. **Figures 8** and **9** depict some of those log jacks as they appeared at the assembly site.

Fig. 8. Finished Log Jacks at Off-Site Assembly Area

Fig. 9. Large Log Jacks at Off-Site Assembly Area

32. An on-Reservation staging and helicopter landing area was constructed near the Bad River. Over 6 acres of hardwood and coniferous forest and other habitats were chopped to the ground and covered with heavy matting for that purpose. Over 2 acres of Bad River's floodplain forest were also cleared for access and workspace.

33. **Figures 10** and **11** are photos taken at the on-Reservation staging area during that process:

Fig. 10. Clearing and Chipping of Timber and Vegetation at Staging Area

Fig. 11. Matting of Staging Area

34. The log jacks were transported from the assembly area to the on-Reservation staging area by semitrucks, cranes, and other heavy machinery.

35. **Figure 12** is a photo taken during that process.

Fig. 12. Lift Test of Small Log Jack at Staging Area

36. Several miles of a major Reservation were severely damaged by the high volume (over 1,000 individual loads) of heavy materials (e.g., matting, log jacks) and machinery needed for the project.

37. An additional, new access route was cut across Band fee land for the sole purpose of accessing to implement the log jack project.

38. Helicopter Transport Services (HTS), an aerial construction company with experience in heavy-lift construction operations in challenging conditions was contracted by Enbridge for the project and collaborated with WWE on the flight and construction protocols.

39. A Sikorsky S-64 Skycrane twin-engine heavy-lift helicopter (the civilian version of the U.S. Army's CH-54 Tarhe) was specified to transport the log jacks from the staging area to the meander, over two-thirds of a mile away, necessitating the closure of a major Reservation road in the flight path.

40. **Figure 13** is an image of that helicopter.

Fig. 13. Heavy-Lift Helicopter Used for Transport and Placement of Log Jacks

41. This helicopter lowered the log jacks to workmen on ground at the meander, who guided the log jacks in place, one by one, over the course of around 470 flights over a week, to ultimately build a revetment 309 feet long in the Bad River and along its banks that consisted of 1,812 logs and 235 boulders bound together by stainless steel bolts and chains.

42. Because log jacks were placed in the river at the toe of the slope, the project required 3.5 weeks of work in the river herself, with associated disturbance to the waters and their wildlife.

43. Construction for the project, from timber harvesting through demobilization, took approximately 18 months. On-Reservation construction lasted 20 weeks, which was almost twice

as long as planned. Based on communications with Enbridge, the Band anticipates that removal of the log jacks will take the same amount of time.

44. These activities resulted in pollution to numerous Reservation waters, impacts to wildlife (including protected species such as bald eagles, trumpeter swans, and wood turtles), expansion of invasive species, loss of habitat, and other environmental consequences.

45. The above process will have to be repeated if additional log jacks are needed to repair or extend the installation at the meander now, with impacts similar to what I have described above.

46. MNRD has spent thousands of hours, and WWE has spent over 2,000 hours more, developing and refining the log jack concept; working with Enbridge to ensure that the final project would be effective and permittable; overseeing implementation; monitoring and inspecting the log jacks; evaluating the impacts of installation and the effects of the project on the natural and cultural resources; and coordinating remediation of the log jack site, staging area, access routes, and surrounding wilderness. MNRD and WWE continue to conduct ongoing analysis of newly developing risks as the Bad River's course has changed with the installation of the log jacks.

47. The log jack project has as a result taken significant time away from the Band's other natural resource protection and preservation priorities.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 13, 2026

/s/ *Naomi Tillison*
Naomi Tillison
Director, Mashkiiziibii Natural Resources Department of the Bad River Band of the Lake Superior Tribe of Chippewa Indians