

WHAT TO KNOW ABOUT THE BAD RIVER BAND'S LAWSUIT AGAINST ENBRIDGE

The Band is fighting to protect our permanent homeland and way of life.

Our reservation is our permanent home. The land and water connect our people with a way of life, connect us with our grandparents, our children, our grandchildren, and our great grandchildren. In 2010, an Enbridge pipeline ruptured and spilled nearly 1 million gallons of oil into the Kalamazoo River in Michigan. Images of wildlife soaked in oil and wetlands covered with a black sheen came flooding out of the disaster. In the following years, pipelines at other river crossings around the country ruptured too. **A similar rupture on our Reservation would devastate the Bad River and our way of life.**

Given this risk, the Band did not renew Enbridge's easements to operate Line 5 when they expired in 2013. In fact, the Tribal Council passed a resolution in 2017 insisting that Enbridge leave our Reservation. Yet Enbridge refused to leave. **Emails uncovered in our lawsuit show that Enbridge executives knew they were trespassing, and that the Band had the legal right to an immediate shutdown of the pipeline.** By disregarding our sovereignty and pumping oil through Line 5, Enbridge has earned well over \$1 billion while jeopardizing our future.

A federal court agreed with the Band that Enbridge is creating a risk at the Meander.

There are currently 11 feet of bank between the Bad River and the pipeline at the narrowest point. Last year, a federal district court ruled that Enbridge is creating a "public nuisance" because Line 5 poses a threat of "imminent harm" if further erosion exposes the pipeline. **The court ordered Enbridge to adopt a plan for monitoring the Bad River Meander and shutting down the pipeline if there is major flooding and erosion.**

The federal court also agreed with the Band that Enbridge is trespassing.

The court also ruled that Enbridge has been knowingly trespassing since 2013. It **ordered Enbridge to cease operating Line 5 on the Reservation entirely by June 2026** and to pay \$5.1 million for the first nine years of trespass, and likely another \$2 million for the rest of the trespass.

Both sides are now appealing, and the Band is asking for more strict requirements.

The Band is asking an appeals court to order Enbridge to:

1. Adopt a more strict monitoring-and-shutdown plan for the Meander
2. End the trespass within six months instead of in 2026
3. Pay a larger share of the more than \$1 billion that it has earned from trespassing

Enbridge is also appealing. They argue that they are not trespassing at all and should not have to pay any money to the Band. Enbridge also argues that the court does not have the authority to impose a plan to monitor the Meander. The appeals court will likely issue a ruling by the fall of 2024.

Enbridge's projects to control the Bad River would permanently alter the river and harm our Reservation resources.

The Meander lays at a unique reach of the Bad River that is vital for flood moderation and where the movement of sediment is essential for fish migrations and the wild rice cycle. It is vital for walleye and sturgeon populations, among many other species. **All the projects Enbridge has proposed would permanently alter flows in the Bad River and violate the Band's water quality laws**, which were adopted to protect the Band's treaty-protected resources. Despite Enbridge's claims, it has never constructed a similar project at a similar reach of river.

There is also **significant doubt that the projects would work given their flawed designs**, and they would involve significant **risks of extreme damage to our Reservation**. For example, Enbridge's most recent proposal involves thousands of helicopter flights directly over the pipeline, carrying thousands of pounds in payloads on each trip. This proposal is against Enbridge's own policy against flying payload-carrying helicopters within 60 feet of the pipeline. In 2018, Enbridge crashed a helicopter on the reservation and another helicopter accidentally dropped a four-ton payload that created a crater. Enbridge's recent proposal ignores both this history and their own policy in a rush to keep the oil flowing. We cannot afford to be so reckless.

And as Vice Chairman Bigboy observed, these projects "would only stretch the trespass out." Enbridge can fully eliminate the risk at the Meander simply by respecting our rights.

Enbridge's proposed reroute threatens our drinking water and treaty-protected natural resources.

The Mashkiiziibii Natural Resources Department has explained to state and federal agencies that the reroute (which would remain right next to our Reservation) poses a threat to the Band's water quality and to our treaty-protected natural resources, including fisheries and wild rice. The Environmental Protection Agency (EPA) agreed, saying that the proposed reroute "will have substantial and unacceptable adverse impacts" on the Bad River and the Kakagon-Bad River Sloughs. When Enbridge rerouted Line 3 in 2021, it caused four aquifer breaches and released thousands of gallons of contaminated drilling fluid at water crossings, which resulted in criminal charges against the company.

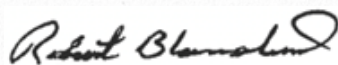
As former Chairman Wiggins said, "We're in our forever home, and there is nowhere to retreat in terms of our way of life." Under the Band's Constitution, the Tribal Council has a responsibility to "conserve and develop our natural resources," not to help Enbridge construct a reroute in our watershed.

Shutting down Line 5 will barely impact gas and propane prices in Wisconsin.

Despite Enbridge's scare tactics about how a shutdown will affect gas prices, Enbridge's own expert admitted at trial that an immediate shutdown of Line 5 would, at most, lead to a one penny increase in the price of a gallon of gasoline in Wisconsin. There are numerous safer alternatives for transporting crude oil and propane to the Line 5 delivery area, including Enbridge's own Line 78 (which has available capacity).

Enbridge's current settlement offer does not address our concerns about protecting our Reservation's resources and our way of life.

Enbridge offered \$80 million in exchange for (a) allowing it to construct a project to block the natural migration of the Bad River, (b) supporting Enbridge's proposed reroute path, and (c) letting Enbridge stay on the Reservation until it completes that reroute (which the court found might never actually get built). This proposal does not address the risks that Enbridge's current pipeline and reroute proposal pose to our Reservation's resources and way of life. And the \$80 million is just a drop in the bucket of profit Enbridge has earned from its trespass so far. Our homeland, our treaty rights, and our way of life are not for sale.



Robert Blanchard
Chairman
Bad River Band of Lake Superior Chippewa