

**Mashkiizibii Natural Resources Department Decision in Support of Categorical Exclusion  
Determination:  
Right-of-Way Application for Enbridge’s Log Jack Bank Stabilization Project at a Meander of the  
Mashkii Ziibii (Bad River)**

**I. Introduction**

Enbridge Energy, Limited Partnership (“Enbridge”) has submitted a Right-of-Way (ROW) Application and associated materials as required by the Bad River Band of Lake Superior Tribe of Chippewa Indians (“Band” or “Tribe”) Chapter 4.07 *Energy Product Facility Rights of Way and Service Lines Code*<sup>1</sup> to install erosion-management structures called “log jacks” on up to approximately 562 linear feet of the Bad River riverbank within the Bad River Reservation. Substantial bank erosion has occurred at this meander—most recently during the spring of 2023 when river flows overtopped the riverbank into the floodplain three successive times—leaving only 10-11 feet of bank between the Bad River and the Line 5 oil and natural gas pipeline at the closest location. As the natural erosion and meandering of the riverbank closer to the pipeline continues, the pipeline will eventually become exposed, which increases the risk of an oil spill.

Enbridge is proposing the project in an effort to prevent the exposure of the Line 5 pipeline. Enbridge is requesting approval to: (a) initially install log jacks along approximately 309 linear feet of the Bad River bank (0.33 acres of fill); (b) implement an adaptive management strategy to potentially add or remove log jacks in the future, dependent upon bank conditions and in coordination with MNRD, along up to an additional 253 linear feet of riverbank (includes both upstream and downstream extents) (0.60 acres of fill); (c) access the project site to complete monitoring and maintenance activities; (d) remove the log jacks within the project duration of one to three years as stated in the land use application submitted by Enbridge for the log jack project; and (e) utilize 0.190 acres on Trust Land as a construction easement, which is a portion of the temporary workspaces required for the log jack project. The total length of riverbank on which Enbridge proposes to install log jacks, including both the area where the log jacks are proposed to be initially installed and the adaptive management area, is thus potentially as much as 562 linear feet of the Bad River bank (0.93 acres of fill). The approximate geographic extent of the proposed ROW is shown in Figure 1.

Note: this proposal is for a 2-year *right-of-way only* in order to cause Enbridge to mitigate potential damage to this waterway, a matter of urgent concern for the Tribe. It does not in any way affect the Tribe’s pending litigation with Enbridge, nor will it give Enbridge permission to keep Line 5 in place long-term.

Mashkiizibii Natural Resources Department (MNRD) has the responsibility to perform the environmental reviews and other environmental functions required under Chapter 4.07 pertaining to ROWs. MNRD’s preliminary determination is that this specific proposed ROW qualifies for a categorical exclusion to the requirement of a full environment review statement as provided in Sec. 4.07.050(b), and this document describes MNRD’s rationale for this preliminary determination, along with MNRD’s preliminary recommendations to avoid, minimize, and mitigate the potential impacts to the natural and

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<sup>1</sup> Formerly labeled as Chapter 423 of the Bad River Band of the Lake Superior Chippewa Indians Tribal Code.

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cultural resources. Potential impacts to the natural and cultural resources may include direct, indirect, or cumulative impacts. Timeframes of potential impacts include the following phases: construction, which consists of the initial installation of log jacks within the river and future installation and/or removal of log jacks within the river as part of the adaptive management approach dependent upon how site conditions may change; operation, including monitoring of the log jacks and site conditions; maintenance of the log jacks and/or associated access and staging areas; and removal of the log jacks and comprehensive restoration of site conditions.

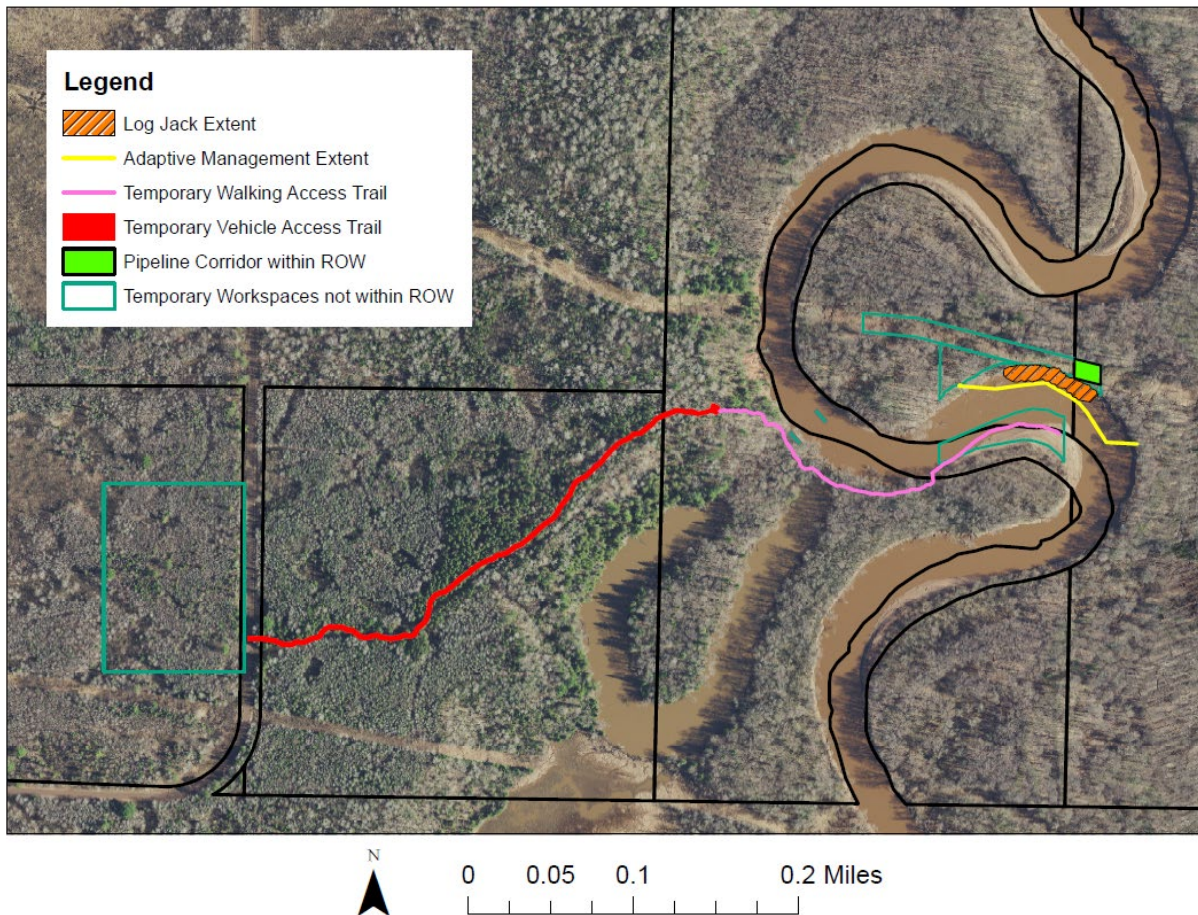


Figure 1: Enbridge has a proposed ROW associated with their log jack project to a Bad River Reservation Tribal River and Land location. The approximate geographic extent of the log jack project is shown above, and the approximate geographic extent of proposed ROW includes the majority of the area shown in the figure that is east of Government Road.

## **II. Categorical Exclusion Determination**

### **Section 4.07.050(b)(1), Categorical Exclusions, provides:**

*Except as provided in subsection (c), the approval of the following categories are excluded from the environmental review requirement:*

#### **(J) Cleanup actions taken under the supervision of the Tribe to avoid, minimize, stabilize, mitigate, or eliminate the release or threat of release of an existing hazardous waste or substance;...**

This categorical exclusion can be used where the Tribe seeks to address the following circumstances: (a) when a release or spill of a hazardous waste or substance has already occurred and action is needed to clean up, mitigate, and/or other necessary actions to address the spill; and (b) when there is a threat of a release or spill of hazardous waste or substance and action is needed to avoid, minimize, eliminate, and/or other necessary actions to address the threat of a spill.

The proposed project is associated with Enbridge's Log Jack Project to stabilize a portion of a bank of Mashkiiziibii (Bad River) by installing log jacks for a duration proposed by Enbridge of one to three years. Enbridge's proposed project is aligned with the log jack concept described in the letter from Chairman Blanchard to Enbridge (dated July 7, 2024) to protect the pristine natural of Mashkiiziibii and her wetlands as Enbridge perpetuates its trespass<sup>2</sup> within the Reservation. Although Enbridge is the project proponent and Enbridge responsible for the design, implementation, maintenance, and removal of the log jack project (including the proper disposal of all project materials), the Tribe has regulatory oversight as the project is located within the exterior boundaries of the Bad River Reservation. MNRD has determined that this project should be considered not as a pipeline maintenance project, as Enbridge proposed in its project review application materials, but a response action undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants which pose an imminent and substantial danger to public health and welfare, given that:

- Substantial bank erosion has occurred at this meander over the decades. The closest distance between the middle of the 30-inch diameter Line 5 oil and natural gas pipeline and the riverbank was roughly 320 feet about 9 years after the pipeline was constructed, and this distance was reduced to approximately 80 feet by 2015. Most recently substantial bank occurred at this meander during the spring of 2023 when river flows overtopped the riverbank into the floodplain three successive times—leaving only 10-11 feet of bank between the Bad River and the pipeline at the closest location.
- While the Tribe and Enbridge have litigated over a ROW in federal court, Enbridge has been adjudicated to be in trespass on the Reservation and has been ordered to cease operations

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<sup>2</sup> Chairman Blanchard's letter to Enbridge (dated July 7, 2024) states "[w]hile the Band believes that Enbridge should promptly eliminate those risks by ending its trespass and leaving the watershed, I write today on behalf of the Band to inform you of a potential design...to protect the pristine nature of Mashkiiziibii and her wetlands for so long as Enbridge perpetuates its trespass." The risks referenced in this statement is the risk the continued operation of Line 5 has on the river, the functioning of her floodplain, hunting, fishing and gathering in the river and within her floodplain and connected wetlands, and the aquatic life and wildlife who depend upon her.

on the Reservation, MNRD and its technical experts continue to have concerns that the court-ordered modifications to Enbridge's purge and shutdown protocol are not appropriately protective for the remaining 17 months before the order goes into effect.

While MNRD has determined that this action qualifies for categorical exclusion, additional justification and required mitigation is appropriate in this matter, given the nature and location of the project and other factors. **The applicant must abide by all requirements herein to avoid, minimize, and mitigate impacts.**

### **III. Analysis**

As provided in Sec. 4.07.050(a)(2), Interests Addressed Under the Environmental Review, MNRD finds as follows:

- **(A) the potential impact on public health or safety;**
  - Timeframes of potential impacts include the following phases: construction, maintenance, monitoring, operation, removal, and decommissioning. The timeframes of potential impact likely will not have adverse impacts on public health or safety as long as appropriate avoidance, minimization, and mitigation measures are taken.
  - With respect to construction, future maintenance activities, and decommissioning, MNRD recommends that Enbridge is required to provide their safety plan and Safety Data Sheets for materials used on-site. MNRD also recommends that Enbridge is required to promptly report any safety issues to Tribe's Fire Chief, Chief Conservation Warden, and MNRD within 24 hours of the incident; this includes incidents to any person, pipeline, and easement. With respect to operation, health and safety concerns are related to potential methane leakage or a crude oil spill. Containment measures for spills or releases of hazardous materials or substances, including oil, in addition to those which are used for the protection of water quality, must be utilized during this work as it will be completed next to and over an active pipeline. All measures for appropriate site containment must also be on-hand and readily available for use during the duration of this project.
  - Potential staging locations on-Reservation for emergency response equipment must be provided to MNRD for review and approval. These locations must have lists of what equipment will be on-hand, and travel times to control points on the Bad River. Choosing staging locations must consider the length of time needed for mitigation actions to begin, as to reduce contamination to as much of the river as possible in the event of a spill. MNRD is currently reviewing the potential daytime staging locations provided by Enbridge on January 23, 2025.
  - To minimize risks to public health and safety due to helicopter use and transport of heavy loads, Enbridge's protocols regarding the Helicopter Transport Services (HTS) Rigging and Execution Plan must be followed along with the relevant conditions in the water-related approvals and permits. As activities associated with the project will be occurring next to and over an active pipeline, there are serious risks to public health and safety if a spill does occur. To ensure a threatened or potential release does not become actualized during this

project, Enbridge must consult with the Bad River Band of Enbridge's current control points within the Reservation during project construction, operation, maintenance, and removal. Before construction begins, Enbridge must provide a project-specific emergency response action plan that includes details of control points, response actions, response equipment, and a plan to respond to unplanned log jack release during helicopter transport in a manner that minimizes adverse environmental effects. MNRD is currently reviewing the Emergency Action Response Plan provided by Enbridge on January 24, 2025, and MNRD and/or the Band will request any modifications to the plan necessary to protect public health or safety. Enbridge must revise the plan and/or provide adequate justification explaining why revisions were not made to the satisfaction of the Band.

- The geographic extent of the proposed ROW does not cross the location of any known brownfield sites (Bad River, 2025).
- The Band is concerned about Missing and Murdered Indigenous Women – a social plague that seems to increase at pipeline construction sites. The Band is considering conditions that should be added to the ROW agreement (if approved) to address and prevent this terrible threat to the tribal community.
- The Tribe identified the need to incorporate conditions in ROWs to brush and to complete other activities in a manner to prevent fire or spread of fire as a medium priority measure to mitigate future wildlife impacts (Bad River, September 2018). Below are MNRD's recommendations on the ROW conditions to reduce the risk of wildfire:
  - A fire extinguisher and shovel must be included in each field vehicle's safety equipment supply and available on each work site. A field vehicle is defined here as a four-wheeled or tracked-vehicle that leaves a road or left on the road if field work is performed on foot.
  - Vehicles must not be parked or idled above dry grass, vegetation, or brush. All trailer chains must be secured and not in contact with the ground. Any generated slash or trimmings shall be dispersed following the lop-and-scatter method<sup>3</sup> so that fuel loading in any single location is not significantly increased.
  - Work area must be clear of flammable materials before field metal welding/cutting/grinding operations, a sprayer must be used to wet down the work area prior to starting, water must be kept on hand and a spotting person must be designated to immediately catch any sparks that could ignite dry fuels.
  - Fueling of vehicles must take place off-site, if practicable, but if it is necessary to fuel in the field, fueling must be done in an upland location using secondary containment and over gravel, rock, or bare dirt.
  - During elevated fire danger (High, Very High, or Extreme), grubbing and mowing activities must be delayed until safer conditions exist. Spark arrestors are required on all portable gasoline-powered equipment. Field staff must refrain from smoking. Enbridge must check local fire danger conditions daily.

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<sup>3</sup> The University of Idaho Extension provides an example of how to reduce the fire risk for slash: <https://www.uidaho.edu/-/media/UIIdaho-Responsive/Files/Extension/topic/forestry/f12-forest-fire-risk-reduction-for-slash.pdf?la=en&hash=1C2A6E8569310F63DCD30BE1099B7356257B30FE>.

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- These conditions exist to address the growing concerns of wildfire in the region and are subject to change as further information is received and evaluated.
- MNRD expects Enbridge to follow federal law in 49 C.F.R. Part 195 from 10/1/2019 that concerns Safety of Hazardous Liquid Pipelines.
- Refer to Section N regarding safety concerns relevant to the transportation networks including roads and the Bad River.
  
- **(B) the potential impact on sites that are sacred or of cultural significance to the Tribe;**
  - The Natural Resources Director consulted with Tribal Historic Preservation Officer (THPO), and MNRD hired a contractor to help the Department implement a cultural resources survey due the inadequacies of surveys or studies completed by Enbridge and its contractors.
  - Potential impacts on sacred or culturally significant sites can be avoided, minimized, or mitigated by following the conditions listed in the Bad River THPO Section 106 NHPA Compliance Form (dated 1/9/2025). This form was sent to the BIA on 1/13/2025. MNRD recommends that the conditions on the THPO Compliance form (dated 1/9/2025) are incorporated into the ROW agreement (if approved). These conditions are summarized below:
    - A minimum of two Tribal Monitors must be present during earth disturbing activities, the placement and removal of the log jacks, and other activities as deemed necessary by the THPO during the duration of the proposed ROW to observe for archeological anomalies. Enbridge must reimburse the Tribe for the associated costs in accordance with the most current version of the THPO Fee Scheduled of Services: [https://www.badriver-nsn.gov/wp-content/uploads/2023/08/Fee-Schedule-for-THPO-Consultant-Services\\_2023.08.02.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2023/08/Fee-Schedule-for-THPO-Consultant-Services_2023.08.02.pdf).
    - An Archeologist, who is hired by the Band, must be on-call during the work and must complete intermittent site visits. The field scheduled for the Archaeologist necessary to protect the cultural resources and uses must be determined by the THPO. Enbridge must reimburse the Tribe for the associated costs in accordance with the most current version of the THPO Fee Scheduled of Services: [https://www.badriver-nsn.gov/wp-content/uploads/2023/08/Fee-Schedule-for-THPO-Consultant-Services\\_2023.08.02.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2023/08/Fee-Schedule-for-THPO-Consultant-Services_2023.08.02.pdf).
    - Following the Tribe's process if inadvertent discovery occurs, including immediately stopping work and contacting the MNRD Director and THPO and implementing the Tribe's no removal policy for inadvertent discoveries;
    - Visually investigated for any potential hibernating wood turtles and properly relocating them from the project area and implementing other measures necessary to protect wood turtles.
    - The log jacks and all associated materials and any other materials introduced by the project proponent during any phase of the ROW (if approved) must be removed by September 30, 2026; and

- Implementing other conditions that the THPO deems necessary to protect the cultural resources and historic properties during the adaptive management and removal phases.
- **(C) the potential impact on sites used by Tribal Members for hunting, fishing, gathering, cultural practices, religious activities or recreation;**
  - Due to the proximity to the river and topography of the river bank, there would be minimal impacts to hunting caused by the log jack structures; however, the installation, maintenance, and removal phases of the log jacks would have impacts affecting the ability of tribal members to hunt and fish in the area due to a variety of factors (e.g., access restrictions, noise, disturbances, etc.).
  - During all phases of the project where there is in stream work there will be impacts to fish movement through this area having impacts to tribal members fishing the river.
  - See Section B regarding cultural practices and religious activities.
  - See Section G regarding medicinal plants and recommendations to avoid, minimize, and/or mitigate the impacts to tribal members' gathering of these plants.
  - The river is used recreationally throughout the different seasons. Impacts to recreational activities are likely to be limited to the installation, maintenance, and removal phases of the log jacks.
  - Enbridge anticipates a duration of 3 weeks to construct the staging area west of Government Road (which is not part of the ROW application) and up to an additional 2 months to complete the initial placement of the log jacks, initial restoration activities, and demobilization. This timeline does not include the time it would take to mobilize for and complete the following work: (a) continuation of site restoration activities, which will start in the 2025 growing season and continue until restoration criteria are met; (b) install or remove any log jacks under the adaptive management concept, which could be implemented after the construction of the initial log jacks and prior to the removal phase; (c) monitoring and maintenance of the log jack structure; and (d) dislodge, disassemble, and remove the log jacks. The proposed project anticipates that the adaptive management and the log jack removal phases will employ a similar approach and duration as the initial log jack installation phase.
  - MNRD is recommending in order to avoid and minimize impacts that traffic associated with the log jack project activities is limited to the designated trails or access routes
  - MNRD is considering if any other conditions can be implemented to minimize or mitigate impacts to hunting, fishing, gathering, cultural practices, religious activities or recreation activities beyond minimizing the duration of log jack project activities.
- **(D) the unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wild rice waters, wild and scenic rivers, ecologically critical areas, Outstanding Tribal Resource Waters, Wetland of International Importance, Sites of International Importance (Ramsar Site) and North American Wetland Conservation Act (NAWCA) lands;**

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- Historic or cultural resources: Please refer to the information in Sections B, C and F regarding the historic or cultural resources nearby or within the geographic extent of the proposed ROW.
- Park lands: The geographic extent of the proposed ROW does not contain park lands.
- Prime farmlands: The geographic extent of the proposed ROW does not contain prime farmlands.
- Wild rice waters: The geographic extent of the proposed ROW does not contain known wild rice waters. However, the geographic extent contains waterways that flow into wild rice waters downstream, specifically the Bad River which supports wild rice in her downstream reaches including not only the Bad River and Kakagon Sloughs Complex but the river herself as far upstream as the Bad River tribal boat launch or beyond.
- Wild and scenic rivers: The geographic extent of the proposed ROW does not contain designated wild and scenic rivers. However, the Bad River has long been recognized in the National Park Service's Nationwide Rivers Inventory (NRI) as a free-flowing river "believed to possess one or more 'outstandingly remarkable' natural or cultural values judged to be at least regionally significant. Hence, NRI river segments<sup>4</sup> are potential candidates for inclusion in the National Wild and Scenic River System. Under the Wild and Scenic Rivers Act section 5(d)(1) and related guidance, all federal agencies must seek to avoid or mitigate actions that would adversely affect NRI river segments." (NPS, 2024) Thus, the MNRD suggests that the ROW, if approved, should contain the condition that at no time should any activities allowed under the easement be permitted if they would negatively impact the Bad River's eligibility as a NRI and potential National Wild and Scenic River.
- Ecologically critical areas: The geographic extent of the proposed ROW contains ecologically critical areas, including: *Anishinaabosibiing* or Exceptional Resource Waters (ERWs) and *Chiminosingbii* or Outstanding Tribal Resources Waters (OTRWs) designated by the Tribe's Water Quality Standards, as well as Conservation Areas designated by the Tribe's Integrated Resources Management Plan (IRMP). The OTRWs, ERWs, and connected waters and the IRMP's designated Resource Management Areas can be viewed in the Bad River Water Quality Designation Mapper on the Tribe's webpage at: <https://www.arcgis.com/apps/View/index.html?appid=6f44c371217e4ee8b5f1c2c705c7c7c5>.
  - The Tribe's Water Quality Standards (Bad River, 2011) defines ERWs as any surface water within the exterior boundaries of the Reservation that is not specifically classified as an Outstanding Resource Water or an Outstanding Tribal Resource Water. New or increased discharges may be allowed in ORWs and ERWs if the applicable antidegradation demonstration and decision requirements are met. The geographic extent of the proposed ROW encompasses wetlands and other surface waters (e.g., oxbow lake) classified as ERWs within the floodplain of the Bad River. Activities including the construction of the log jack project, implementation of any adaptive

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<sup>4</sup> <https://home.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm>

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management of the log jacks, maintenance of the project, removal of the log jacks, and restoration work are expected to have impacts on the ERWs within the proposed ROW. Impacts to ERWs and conditions to avoid, minimize, and mitigate these impacts were evaluated under the Antidegradation Policy in the Tribe's Water Quality Standards as an activity with the potential to lower water quality in an ERW must comply with the Antidegradation provisions. This evaluation considered public comments received during the 30-day public comment period, which started October 28, 2024, and concludes on November 27, 2024. See below for details pertaining to OTRWs. Refer to Section H for more details regarding the evaluation and decision-making under the Antidegradation Policy.

- Conservation Areas (CAs) are defined by the IRMP to include the major floodplain of the Bad River approximated by an area ¼ mile wide on both sides of the river as well as other areas on the Reservation including the Kakagon and Bad River Sloughs wetland complex downstream of the corridor. The Tribe's IRMP (2001) states "Lands designated as Conservation Areas are unique within the Reservation and are significant on a regional scale as well. The protection of these areas from development and timber harvest demonstrates the Band's commitment to the maintaining the health of unusual and valuable communities." The geographic extent of the proposed ROW and associated activities are expected to have a direct impact on the CAs; however, the proposed ROW associated with Enbridge's Log Jack Project is considered a response action needed to alleviate the possibility of a hazardous substance release from existing in-ground structures that Enbridge is operating in trespass. Impacts to CAs and conditions to avoid and minimize these impacts are being evaluated under the Bad River Reservation Wetlands and Watercourse Protection Ordinance, and Enbridge must comply with permit decisions and conditions. Refer to Section H for more details regarding the evaluation and decision-making under the Bad River Reservation Wetlands and Watercourse Protection Ordinance.
- The project is wholly contained within the Kakagon-Bad River Wetlands-Forest Corridor Important Bird Area. This area is an important migration stopover site for birds migrating along the Mississippi flyway with over 50,000 birds traveling through each night during peak migration. It also serves as a nesting area for multiple species. The area will be impacted by the installation of the log jacks. Work must be completed outside of migration and nesting timing windows in order to minimize impacts to the nearby bird communities.
- Outstanding Tribal Resource Waters: The geographic extent of the proposed ROW includes the Bad River, which is a *Chi minosingbii* or Outstanding Tribal Resource Waters (OTRW). The Bad River flows into the Kakagon and Bad River Sloughs wetland complex, which is also

an OTRW. The Tribe's Water Quality Standards (Bad River, 2011) defines OTRWs waters are recognized as being largely pristine and important for the cultivation of wild rice or the spawning of lake sturgeon, or have other special resource values, and, therefore, that water quality shall be maintained and protected in all cases without degradation. New or increased discharges or alternations of the background conditions are not allowed in OTRWs; however, a short-term, temporary (no more than 6 months and no more than necessary) lowering of water quality may be allowed provided the applicable antidegradation demonstration and decision requirements are met. Activities associated with the proposed ROW (including, but not limited to, the construction of the log jacks, implementation of any adaptive management of the log jacks, maintenance of the project, removal of the log jacks, and restoration work) are expected to have impacts on the Bad River. Impacts to OTRWs and conditions to avoid, minimize, and mitigate these impacts were evaluated under the Antidegradation Policy in the Tribe's Water Quality Standards as any activity with the potential to lower water quality in an OTRW must comply with the Antidegradation provisions. This evaluation considered public comments received during the 30-day public comment period, which started on October 28, 2024, and concluded on November 27, 2024. Refer to Section H for more details regarding the evaluation and decision-making under the Antidegradation Policy.

- Wetland of International Importance: The geographic extent of the proposed ROW does not contain any Wetland of International Importance (Ramsar site). The Bad River is within the geographic extent, and the Bad River flows into a Wetland of International Importance: Kakagon and Bad River Sloughs wetland complex.
- North American Wetland Conservation Act (NAWCA): The geographic extent of the proposed ROW does not include NAWCA parcels as confirmed by the Tribe's GIS Specialist. However, there is an adjacent NAWCA parcel immediately south and adjacent to the Tri-State Holdings, LLC, parcel owned by Enbridge along the Bad River Meander on which some of the log jack activities will occur. Additional NAWCA parcels are present in the surrounding area but not immediately adjacent to the Trust, Town of Sanborn, Tribal Fee, and Private lands on which the activities will occur.
- **(E) whether the proposed activity is related to other actions with individually insignificant but cumulatively significant impacts;**
  - The proposed activity is designed to place log jacks along the bank of the Bad River to temporarily prevent further erosion of the riverbank to protect the river and the surrounding and downstream ecosystems from the potential of an exposed pipeline and the risks if that should occur. The log jacks may support some uses (such as providing some habitat for wildlife and other aquatic life); however, this erosion is part of the natural evolution of the Bad River and the short-term, long-term, and cumulative impacts of delaying this natural movement is not fully known. Other impacts associated with the log jack installation, maintenance, possible adaptive management, and removal are also not fully known due to multiple factors. For example, as the modeling completed can only

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accurately predict possible scenarios to a certain degree and cannot encompass every scenario or attributing factor to each scenario fully. MNRD asked Enbridge to answer the following question with an explanation and justification supporting their response: Is the action proposed related to other actions with individually insignificant but cumulative significant environmental effects? Enbridge's response provided to MNRD is copied and pasted below:

*"The erosion control Project is not related to other actions; it is an independent project specifically designed to reduce bank erosion at a point on the Bad River. Information demonstrating the temporary and insignificant effects from the Project is set forth in the application appended as Attachment 1, as well as the reports referenced above. The installation and removal of the Project will also occur at different times, thereby not resulting in any cumulative effects. While the Project is not related to other actions in the area, Enbridge notes that the Project will reduce further erosion at the Bad River, thereby limiting sediment loading into the Bad River that will otherwise occur without the Project. This will have an effect of offsetting any actions unrelated to the Project that may result in increased sediment loading. For these reasons, no significant cumulative effects will occur."*

- MNRD concluded that impacts to the ecosystem from this project could contribute to cumulative impacts to the ecosystem on the Reservation, especially from projects both upstream and downstream along the Bad River; collectively, these activities can have a significant impact on the landscape and natural resources. Potential projects upstream and downstream of the log jack project that could aggregate include, but are not limited to:
  - Maintenance and decommissioning of the Xcel Energy transmission line corridors;
  - Maintenance and other activities along either the Northern Natural Gas or TransCanada natural gas pipeline corridors, including but not limited to anomaly digs and corridor maintenance;
  - Decommissioning and removal of the Line 5 pipeline from the Bad River and floodplain;
  - Enbridge's proposal to construct 41-miles of pipeline adjacent to the Reservation and located upstream and in other areas connected to tribal waters, natural resources, and cultural resources;
  - Road maintenance work on Bad River bridges and other road infrastructure within the watershed; and
  - Development of undeveloped lands within the watersheds for private, municipal/governmental, or other purposes.
- Continued access to the site has led to the compaction of soils within the area of interest as well impacts to the sensitive life stages of certain species. Compaction of the soils at the project site is an issue due to the high clay content in the soil. Compacted soils with high bulk density, reduced pore space, and poor aeration/drainage would limit the ability of vegetation to establish. With the unknowns around project phases, such as adaptive management, plan BMPs must be used to reduce the amount of soil compaction throughout the entirety of the project.

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- MNRD's recommendation to avoid, minimize, and/or mitigate cumulative impacts is to condition the 2-year ROW agreement (if approved) with a requirement for Enbridge to complete a comprehensive study (including necessary modeling and analysis) on the removal of the Enbridge Line 5 pipeline from the Bad River and her floodplain and evaluate the impacts if the removal of this section of the pipeline occurs: (a) at the same time that the log jacks are removed, which is by September 30, 2026; or (b) at a different time than the log jack removal. This study must be submitted to MNRD for review and feedback. MNRD is also considering if other conditions are necessary for Enbridge to implement to avoid, minimize and/or mitigate cumulative impacts.
- **(F) the potential impact on sites, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, archeological, cultural, or historical resources;**
  - The entire reservation is potentially eligible for listing on National Register of Historic Places and is a significant cultural and historical resource. Based on Natural Resources Director's consultation with THPO, Enbridge's Log Jack Project had direct or indirect adverse effects on historic properties and cultural resources. However, this project is considered by MNRD as a response action undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants which pose an imminent and substantial danger to public health and welfare. Thus, conditions to avoid, minimize, and/or mitigate these impacts were identified by THPO as described in the THPO Compliance form (dated 1/9/2025) and summarized in Section B.
- **(G) the potential impact on endangered or threatened species or their habitat that has been determined to be critical under Tribe law or under the federal Endangered Species Act;**
  - Ma'iingan (Gray wolf, *Canis lupus*) have been observed utilizing the habitat at the project site. For Ma'iingan, they utilize this area for movement, with no known current den locations in the area. If a den location is discovered during the duration of the ROW (if approved), then measures to avoid, minimize, and/or mitigate impacts as determined by MNRD must be implemented.
  - Wood turtles (*Gleptemys insculpta*) utilize the Bad River and bank for both hibernation and for nesting. Should work occur along the bank and/or below the Ordinary High-Water Mark, there must be surveys done prior to work being started in accordance with guidelines from MNRD Wildlife Program Manager, and should turtles be found within the workspace, the turtles should be moved out of the working space in a way to prevent any injury or loss of turtle. If work occurs during the nesting season of wood turtles from May 1<sup>st</sup> – September 30<sup>th</sup>, heavy equipment should not be used on sandy riverbanks to prevent disturbance of any potential turtle nests. Other measures that MNRD deems necessary to protect wood turtles and avoid, minimize, and/or mitigate impacts must be followed.
  - During the growing season, this area provides maternal roosts to multiple protected bat species. Any installation, maintenance, and removal of log jacks during this time may disturb

and impact the local bat community. Tree removal and the use of heavy equipment should be avoided from May 1<sup>st</sup> – August 31<sup>st</sup>.

- At the project site there were no threatened or endangered plant species identified in the survey efforts. There is a NHI listing for *Cypripedium arietinum* within 1 mile of the area of interest (AOI) but no individuals were found during surveys.
- The botanical surveys found 110 medicinal plant species within the AOI. Throughout the duration of the ROW (if approved) care should be taken to minimize impacts to these species due to their cultural significance. During restoration activities, observations should be made to confirm that these species are still present within the Tribal trust and fee parcels impacted by the project, and if not, Enbridge must implement mitigation measures as determined by MNRD so the plant species are returned to the landscape so tribal members can continue to gather these medicines.
- **(H) whether the action may violate federal or Tribal Environmental Laws;**
  - Given the risk of an oil spill, which would devastate the Bad River and the Band's way of life, the Band did not renew Enbridge's easements to operate Line 5 when they expired in 2013. The Tribal Council passed a resolution in 2017<sup>5</sup> insisting that Enbridge leave the Reservation and the watershed. A federal court ruled that Enbridge has been knowingly trespassing since 2013 and ordered Enbridge to cease operating Line 5 on the Reservation by June 16, 2026.
  - Action is unlikely to further violate federal or Tribal laws if the following steps are taken:
    - Proper performance for the implementation of BMPs, and adherence to permit conditions to avoid violation of wetland/water laws during the installation of log jack base design, adaptive management phase, and the removal of log jacks including, but not limited to:
      - Analysis and permitting under the Bad River Reservation Wetland and Watercourse Protection Ordinance (Chapter 3.11) was completed by MNRD. MNRD has determined that the proposed ROW (if approved) meets the Tribal interest criteria described in Chapter 3.11, which is one of the standards and criteria that must be considered under this code. Because the purpose of the proposal is to decrease the risk of an oil spill from Line 5 by stabilizing the bank of the Bad River and preventing the pipeline from being exposed, the work is dependent upon the wetlands

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<sup>5</sup> Refer to Tribal Council resolution 1-4-147-738 ([https://www.badriver-nsn.gov/wp-content/uploads/2019/11/Pipeline\\_Resolution\\_Line5\\_Removal\\_2017.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2019/11/Pipeline_Resolution_Line5_Removal_2017.pdf)) and resolution 10-30-19-226 ([https://www.badriver-nsn.gov/wp-content/uploads/2020/02/NRD\\_EnbridgeRemoval\\_Resolution\\_201910.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2020/02/NRD_EnbridgeRemoval_Resolution_201910.pdf)) for more details. A summary about the Band's lawsuit against Enbridge is available at: <https://www.badriver-nsn.gov/wp-content/uploads/2024/03/Handout-about-Line-5-3-pages.pdf>.

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and watercourse in the proposed ROW. Wetland and watercourse impacts are anticipated, and mitigation is required in response to those impacts. The Bad River Reservation Wetland and Watercourse Protection Ordinance (WWPO) Permit for the installation of the log jacks was issued on January 10, 2025, and amended on January 16, 2025. Enbridge must follow the specifications and conditions outlined in the WWPO Permit.

- Anti-degradation review and analysis was completed by MNRD for Enbridge's log jack project. MNRD posted notice (10/28/2024) regarding Anti-degradation decision-making and the public comment period ended 11/27/2024. MNRD has determined the lowering of water quality arises entirely to the response actions undertaken to alleviate a release into the environment which may pose an imminent and substantial danger to public health and welfare, which is one part of the evaluation under the Antidegradation Policy. MNRD has determined that water quality will be lowered due to the log jack project and existing uses will be affected. MNRD's recommendation was for the Tribal Council to conditionally approve the Antidegradation Decision with conditions that avoid, minimize, and mitigate water impacts including, but not limited, a condition requiring Enbridge and its contractors participation in a pre-construction meeting with MNRD prior to the start of construction to review the conditions of permits and approvals and to discuss safety concerns and protocols, conditions regarding financial assurances, and a condition limiting the duration of in-stream work. MNRD's recommendation for the Antidegradation Decision was presented to the Tribal Council for review and final decision-making on December 30, 2024. The Anti-degradation Decision was approved by Tribal Council, with conditions, under resolution 12-30-24-02. Enbridge must follow the specifications and conditions outlined in the Anti-degradation Decision. See Section D above for more information regarding OTRWs, ERWs, and the Tribe's Antidegradation Policy.
- A Clean Water Act (CWA) Section 401 certification was received for Enbridge's Log Jack Proposal; this request is associated with authorization from Army Corps of Engineers under CWA Section 404 and Section 10. MNRD's review and analysis has been completed. MNRD posted notice (10/28/2024) regarding CWA 401 certification and the public comment period ended 11/27/2024. MNRD's recommendation for the CWA 401 certification was presented to Tribal Council for review and final decision-making on December 30, 2024. The Tribe has determined, however, that certain conditions are necessary to protect (a) the public health and welfare of the Tribe, its members, and others living on its Reservation, and (b) the present and future use of

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Reservation waters for cultural purposes, propagation of fish and aquatic life and wildlife, and other legitimate uses, such as a condition requiring Enbridge to remove the log jacks and all associated materials by September 30, 2026. The CWA Section 401 certification was approved by Tribal Council, with conditions, for Enbridge's Log Jack proposal under resolution 12-30-24-03. Enbridge must follow the specifications and conditions outlined in the CWA Section 401 certification. Authorization from Army Corps of Engineers for Enbridge's Log Jack Project was issued on January 21, 2025, under the Corp's Bank Stabilization and Habitat Improvement Regional General Permit; this general permit is available at:

<https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/Bank%20Stabilization%20Habitat%20Improvement.pdf?ver=z8W5UCm-W7cHsRrDasa50A%3d%3d>.

- Enbridge must obtain permit coverage if any construction activity is anticipated to disturb one or more acres of land and discharges stormwater to waters of the U.S as defined under the EPA National Discharge Elimination System (NPDES) Construction General Permit (CGP) for Stormwater Discharged from Construction Activities. The disturbance includes those construction activities that are part of a common plan of development or sale that will cumulatively disturb one or more acres of land and discharge stormwater to waters of the U.S. As part of obtaining coverage under the CGP, a site-specific Stormwater Pollution Prevention Plan (SWPPP) is required to be developed and submitted to MNRD. Information about this permit can be found at: <https://www.epa.gov/npdes/2022-construction-general-permit-cgp>.
- In regard to the adaptive management and removal phases, the WWPO permit, Antidegradation Decision, and CWA Section 401 Certification of the Army Corps' authorization all included the following condition:
  - *Following the installation of the log jack base design, MNRD will provide a recommendation to the Band regarding the conditions for the adaptive management and removal phases necessary to protect the natural and cultural resources, including water quality and existing uses. MNRD's recommendation will consider Enbridge's execution of the base design and adherence to permits and approvals, the results of the monitoring and inspections completed, measures to minimize and/or mitigate effects, the impacts and challenges of adaptive management in different seasonal conditions, and the impacts and challenges of removal during the timeframe specified in condition 31. Adaptive management and removal conditions approved by the Band shall become conditions to the relevant federal and Tribal*

*permits automatically or through permit condition modification where necessary.*

- Adherence to tribal and federal laws during the duration of the ROW (if approved) and the maintenance, operational, and decommissioning including, but not limited to:
  - Water-related laws, such as the Tribe's Chapter 3.11 (<https://law.badriver-nsn.gov/us/nsn/badriver/council/code/3.11>), Tribe's Chapter 3.12 (<https://law.badriver-nsn.gov/us/nsn/badriver/council/code/3.12>), Tribe's Water Quality Standards ([https://www.badriver-nsn.gov/wp-content/uploads/2020/01/NRD\\_WaterQualityStandards\\_2011.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2020/01/NRD_WaterQualityStandards_2011.pdf)), and the Clean Water Act.
  - Tribe's Right-of-Way Maintenance Method Ordinance (Chapter 4.06) establishes guidelines for clearing ROW vegetation: <https://law.badriver-nsn.gov/us/nsn/badriver/council/code/4.06>.
  - Tribe's Environmental Response and Remediation Code (Ch. 3.25) regulates the identification of, threat of, or actual discharge of hazardous substances: <https://law.badriver-nsn.gov/us/nsn/badriver/council/code/3.25>.
  - The terms and conditions of the ROW agreement (if approved). A ROW application was submitted to BIA, who is processing it in accordance with federal law and BIA's policies and procedures.
  - US EPA Regulations: 40 CFR part 110, Discharge of Oil, and 40 CFR part 112, Oil Pollution Prevention.
  - Other applicable tribal or federal laws, such as adhering to tribal moratoriums on birch and cedar and conservation codes to avoid, minimize, or mitigate impacts to fish and wildlife.
- **(I) the potential impact on air quality;**
  - There are two basic kinds of potential air quality impacts: during construction, maintenance, and decommissioning phases and during operation.
  - During construction, maintenance, and decommissioning phases, air quality impacts are likely to be limited if appropriate measures are followed with respect to operating machinery. Accordingly, the Natural Resources Department recommends that the following requirements regarding equipment operation be required:
    - Construction, maintenance, decommissioning, or other activities that may generate dust, construction vehicle exhaust generation, and placement of asphalt pavement must implement dust control best management practices (BMPs), such as watering and suspension of earth moving activities during high winds, mulching and seeding when exposed earth within the construction or decommissioning footprint that will be inactive for extended periods of time, and use construction equipment with

emissions controls and minimize equipment idling time to reduce equipment exhaust emissions.

- After construction, impacts are likely to be limited if proper protocols are followed with respect to monitoring and adapting management of the infrastructure. Refer to the public safety section for more information regarding the expectation around pipeline operation.
  
- **(J) the potential impact on water resources, including surface and ground water, water quality, water quantity, water uses and rights, fisheries, floodplains and/or wetlands;**
  - Surface water: Activities associated with the proposed ROW, including during the construction, maintenance, operational, adaptive management, decommissioning and removal phases, have the potential to impact water resources, including surface waters. The proposed project is within the Bad River, an Outstanding Resource Tribal Waters (Tier 3 Water) protected for cultural, wildlife, aquatic life and fish, and recreational uses among other uses. Impacts are also proposed to wetlands classified as Exceptional Resources Water (Tier 2 Water) protected for cultural and wetland uses among other uses. Impacts to other ERWs (such as the oxbow located on the left bank of the river) have the potential to occur due to the proximity to project activities and connections to the OTRW and other ERWs. These surface waters are within the Lower Bad River Watershed, which is part of the Bad River Watershed within the broader Lake Superior basin. Refer to Section D above for details regarding OTRWs and ERWs and refer to Section H for details on applicable water-related laws. See below for information on potential impacts to water quality, water quantity, water uses and rights, fisheries, floodplains, and wetlands and MNRD's recommendations to avoid, minimize and mitigate these potential impacts. MNRD has reviewed and analyzed information from the applicant relevant to potential surface water impacts associated with the log jack project. MNRD will continue to evaluate impacts and develop recommendations to avoid, minimize, or mitigate the potential impacts during the different phases of the proposed ROW.
  - Ground water: Activities associated with the proposed ROW have the potential to impact water resources, including ground water. Groundwater is the primary drinking water source within the Bad River Reservation and the interactions of groundwater and surface waters support critical uses, such as fisheries and cultural. Activities covered in this ROW (if approved) include activities that could impact infiltration rates or possibly contaminate groundwater, including but not limited to activities resulting in soil compaction or possible release of hazardous substances. Conditions should be included for any future activities (e.g., decommissioning) that limit the potential of a hazardous substance release and require prompt containment and cleanup any releases or spills, minimize and mitigate soil compaction, and minimize and mitigate impacts to uses.
  - Water quality: Outstanding Tribal Resource Waters (OTRW) are largely pristine and constitute a significantly important cultural and ecological resource. Exceptional Resource Waters (ERW) are of high quality and culturally important for the ecosystems they support. Activities associated with the proposed ROW (if approved) have the potential to impact

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water quality. A discharge to surface water must not cause or contribute to an exceedance of the criteria included in the Bad River Tribe's Water Quality Standards (WQS). Potential water quality concerns include, but are not limited to, increased erosion/sedimentation, increased turbidity, changes in water uses and wetland functions, and the potential for the release of hazardous substances associated with equipment. Refer to Section H above for details regarding wetland/water laws, including the MNRD's evaluations. See below for MNRD's recommendations to avoid, minimize, and mitigate the potential impacts to water quality.

- **Water quantity:** The Tribe identified the restoration and protection of wetlands along undeveloped shorelines as a project to mitigate riverbank erosion impacts; the Tribe also concluded conducting wetland functional assessments to prioritize restoration and protection efforts within the Lower Bad River Watershed is a high priority measure to mitigate future flooding impacts (Bad River, September 2018). See below for MNRD's recommendations to avoid, minimize, and mitigate potential impacts to water quantity.
- **Water uses and rights:** The Antidegradation Policy for the Bad River Tribe's Water Quality Standards (WQS) protects existing uses and prevents high quality waters from being unnecessarily degraded. Activities associated with the proposed ROW have the potential to impact existing and designated uses of waters and water rights. The following designated uses apply to the various classes of surface waters that are located within the project area: Cultural, Wildlife, Wetlands, Wild Rice, Aquatic Life and Fish, Recreational, Cool Water Fishery, Commercial, and Navigation. Refer to Section H above for details regarding wetland/water laws. See below for MNRD's recommendations to avoid, minimize, and mitigate potential impacts to uses and rights.
- **Fisheries:** The project area is within the main stem of the Bad River, downstream of major spawning habitat and upstream of major nursery habitat. This area of the river is one of the most dynamic parts of the watershed. Large amounts of the water that falls into the watershed flows through this area. There is evidence of the river migrating and leaving oxbow lakes along the floodplain in this region. The fishery habitat type in the area is largely coarse woody debris (CWD), sand flats, and deep pools with minimal vegetation within the stream. This project seeks to postpone the river from the natural migrating process through armoring the shoreline to prevent erosion of the bank to prevent the pipeline from being exposed, which increases the risk of an oil spill. The installation of this project will minimize the amount of CWD that is removed from the location due to habitat types are limited in this region. During all phases of this project river connectivity during crucial parts of the year are most important for fisheries. The timing of the installation and in-stream work should avoid impairing migrating fish from reaching upstream spawning grounds. The removal of the project should minimize impact to the fish community through timing the removal for outside of migration windows of anadromous fish. Fish movement through this site is not only important for fish stock health, but for cultural activities. Upstream of this site is a sacred fishing location for the members of the tribe. Disruption of migration of fish through this area would be seen as an infringement on tribal treaty rights to fish in historic locations.
- **Floodplains:** The project area falls within the Bad River Floodplain. The floodplain is a part of a larger wetland complex that is connected to the Bad River, Sugarbush Creek, and multiple

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oxbow lakes. River flows overtop the riverbank and enter the floodplain during large runoff events (i.e., spring melt, large precipitation events), which lead to high levels of natural erosion of the riverbank and meandering of the river. The peak flood inundation that occurred along this reach of the Bad River during the July 2016 flood is shown in the figure below as modeled by US Geological Survey in collaboration with the Tribe (USGS, 2017). With the installation of the log jacks, the natural meandering of the stream will be disrupted, and the floodplain will experience less natural erosion; however, this impact will be mitigated with a short term of the ROW (i.e., 2 years or less) if approved and with the removal of the log jacks and site restoration, and natural erosion and meandering will be able to continue. With proper design, construction, and decommissioning protocols, other impacts on the floodplain associated with the installation and removal of log jacks and adaptive management within the ROW should be minimized and mitigated if plans are executed correctly and permit conditions are implemented correctly. Appropriate monitoring during log jack installation and removal along with appropriate review and approval of any future adaptive management and maintenance will be necessary to minimize impacts to floodplains.

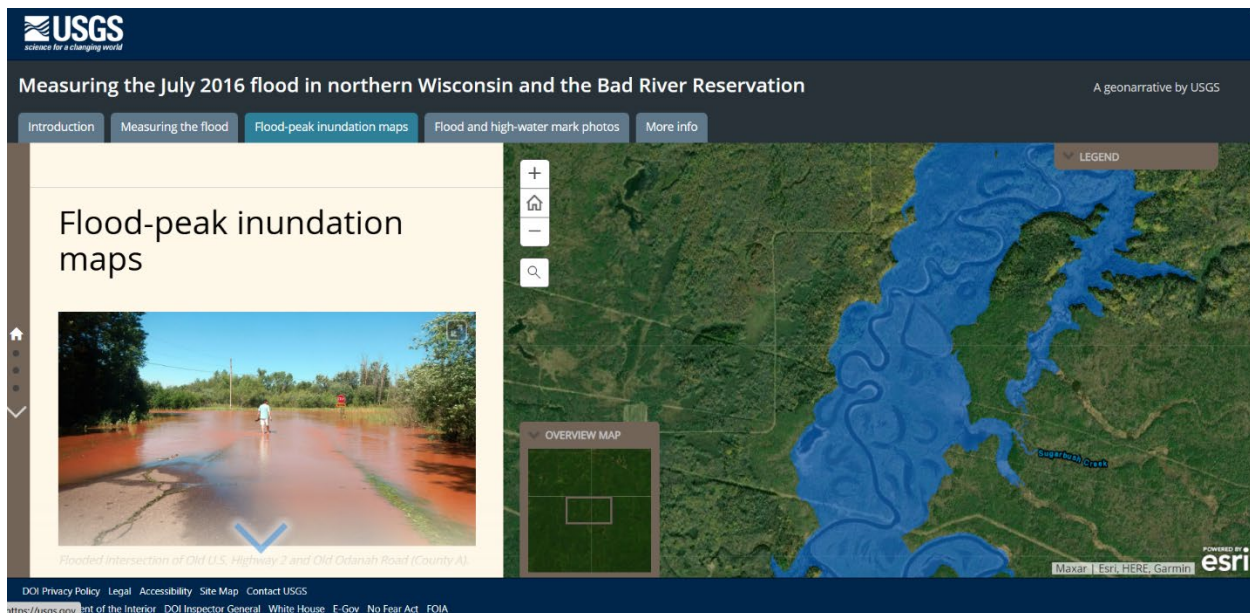


Figure 2: The peak flood inundation map developed by USGS for the July 2016 flood the reach of the Bad River where the geographic extent of the proposed ROW is located. The peak flood inundation map for the Bad River and other portions of the Bad River Reservation is available at: <https://geonarrative.usgs.gov/badriver2016flood/>.

- Wetlands: Activities associated with the proposed ROW will impact wetlands. Wetlands present in the geographic extent of the proposed ROW include 1.04 acres of floodplain

forest wetlands<sup>6</sup> and up to 0.93 acres of impacts below the ordinary high-water mark within the Bad River. The wetlands within the corridor filters runoff from the surrounding landscape that flows into the Bad River and helps manage flooding and drainage during high flow events. They also protect and manage erosion along the riverbank of the Bad River and provide habitat for aquatic life. Refer to Section H above for details regarding wetland/water laws, including the evaluation MNRD completed under Chapter 3.11. As mentioned in the water quantity section above, assessing, restoring, and protecting wetlands within the Lower Bad Watershed is a high priority mitigation measure for the Tribe (Bad River, September 2018). See below for MNRD's recommendations to avoid, minimize, and mitigate the potential impacts to wetlands.

- Water-Related Recommendations:
  - Proper performance of construction activities, implementation of BMPs, and adherence to conditions contained in water-related permits and approvals are necessary actions to avoid, minimize, and/or mitigate potential impacts of installation of the log jacks.
    - Refer to the Floodplain section above for recommendations to minimize impacts to floodplains.
  - To minimize risk and adverse water quality effects associated with helicopter transporting loads, Enbridge's protocols regarding the Helicopter Transport Services (HTS) Rigging and Execution Plan (which includes a section on Inadvertent Release Prevention) must be followed along with the conditions in the water-related approvals and permits.
  - Future maintenance, operational, adaptive management, decommissioning, and removal activities, such as brushing the corridor, installing additional infrastructure, etc., are subject to review and permitting facilitated through the Tribe's Project Review Process implemented by MNRD. The Project Review Process will evaluate potential impacts to the natural and cultural resources and ways to avoid, minimize and/or mitigate impacts along with identifying the permits/approvals necessary to obtain prior to implementation of the activity. Information about the Tribe's Project Review Process is available at: <https://www.badriver-nsn.gov/natural-resources/projectreviews/>. The implementation of the adaptive management plan and removal of log jacks are subject to review and approval by MNRD as described in Section H.
    - Conditions should be included for any future activities (e.g., decommissioning) that limit the potential of a hazardous substance release and require prompt containment and cleanup any releases or spills, minimize and mitigate soil compaction, and minimize and mitigate impacts to uses.

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<sup>6</sup> Additional wetland impacts will occur with the implementation of Enbridge's log jack project. For example, wetland impacts have been and will occur at staging areas outside the scope of the proposed ROW but within the Bad River Watershed, such as the wetland impacts west of Government Road adjacent to the geographic extent of the proposed ROW.

- Refer to recommendations provided in other sections of this document including, but not limited to, Section E above for recommendations to avoid, minimize, and mitigate cumulative impacts. MNRD is evaluating recommendations to assess, restore, and protect wetlands within the Lower Bad Watershed to mitigate future flooding and shoreline erosion impacts.
  - Access permits are required for Enbridge's activities within the Reservation. Access permits issued by MNRD include standard conditions, such as the requirement for Enbridge's to complete activities using BMPs and to submit any data collected within the Reservation boundaries to MNRD within 30 days of collection unless otherwise specified in related permits or approvals. Information about Access Permits, including the applicable fee structure, is available at: <https://www.badriver-nsn.gov/natural-resources/projectreviews/>.
- **(K) the potential impact on biological resources, including wildlife, vegetation, ecosystems and biological communities;**
    - Wildlife: Work should follow wildlife avoidance guidelines to minimize impacts to wildlife communities. Details on the wildlife avoidance guidelines can be found at: [https://www.badriver-nsn.gov/wp-content/uploads/2020/06/species\\_avoidanceall.pdf](https://www.badriver-nsn.gov/wp-content/uploads/2020/06/species_avoidanceall.pdf) Information must be submitted to MNRD Director ([nrdirector@badriver-nsn.gov](mailto:nrdirector@badriver-nsn.gov)), Wildlife Program Manager ([Wildlife@badriver-nsn.gov](mailto:Wildlife@badriver-nsn.gov)), and Environmental Specialist ([environmental@badriver-nsn.gov](mailto:environmental@badriver-nsn.gov)) of significant wildlife sightings (e.g., coyote, fox, bobcat, eagle, otter, fisher, marten, etc.) during ROW activities. Documentation of sightings should include GPS coordinates, species, number of individuals, direction of travel, what the encounter entailed (e.g. did the individual stay nearby and watch, run away, ignore workers, etc.).
    - Vegetation: Impacts to vegetation are likely to be avoided, minimized, and/or mitigated during the duration of the proposed ROW if the following conditions are implemented:
      - Tribe's Right-of-Way Maintenance Method Ordinance (Chapter 4.06) and other tribal and federal laws must be followed.
      - In order to avoid and minimize the introduction and spread of non-local beings (invasive species) during the duration of the ROW (if approved), including construction, maintenance, and removal phases, Bad River requirements regarding equipment cleaning and inspections must be followed. Furthermore, Bad River requirements include avoiding disturbance of any non-local beings within the geographic extent of the proposed ROW to the extent practicable, controlling the existing buckthorn present within the project footprint in accordance with the WWPO permit conditions, and using MNRD-approved native seed mixes when reseeding is necessary.
      - If the ROW is approved, the geographic extent of the ROW should be surveyed for non-local beings (invasive species) and resurveyed annually during the duration of the ROW agreement. Non-local being populations that are new or expanding should be controlled using MNRD approved methods.

- During construction phase (i.e., installation of log jack base design), vegetative management or tree clearing is planned within the geographic extent of the proposed ROW including along the access route and corresponding staging areas. During the maintenance and operation phases or any activity that requires vegetative management or tree clearing, the following conditions must be implemented to avoid, minimize, and mitigate impacts to birch, cedar, and oak:
  - Birch and cedar are protected species and cutting of them (including branches) must be avoided. If cutting is necessary, then Enbridge is responsible for communicating with MNRD (typically through the Tribe's Project Review Process), and based on that communication, Enbridge will be responsible for implementing site-specific guidance from MNRD. This site-specific guidance may include inventorying the amount of birch and/or cedar that is two-inch diameter at breast height (dbh) or greater to be cut and compensating MNRD to purchase and plant an equivalent amount of birch and/or cedar at a different location within the Reservation boundaries. This site-specific guidance may also include reporting cedar seedlings under two-inch diameter to MNRD so our Forestry program can assess the potential for transplanting.
    - In a memo dated 1/10/2025, Enbridge identified that: (a) no cedar was identified in the approved workspaces or access; (b) 281 birch trees are present within the staging area west of Government Road that Enbridge is planning to remove<sup>7</sup>; (c) 10 of the 12 birch trees present within access routes may need to be removed; and (d) six birch trees are present within the emergency set down area located east of the river and may need to be removed if this area is utilized. For the birch trees that must be cut, Enbridge must:
      - Obtain MNRD's site-specific requirements to avoid, minimize, and mitigate impacts to birch prior to cutting the birch trees;
      - Transport cut birch trees 2-inch in diameter and larger to the Bad River Firewood Bank for cultural use by tribal members. The Bad River Firewood Bank is currently located at 69133 US-2, Ashland, WI 54806;
        - Paper Birch trees 6" dbh or larger should not be cut into shorter logs at the project site, but

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<sup>7</sup> Note that although the staging area described in (b) is not within the geographic extent of the proposed ROW, Enbridge must still implement site-specific guidance given by MNRD to avoid, minimize and/or mitigate impacts for removal of these birch trees within the exterior boundaries of the Reservation.

rather transferred to the firewood bank and notify MNRD so MNRD can post notice to Tribal Members who may be interested in harvesting the bark prior to being used for firewood. Measures to minimize damage to the bark must be implemented.

- MNRD is working to determine the appropriate frequency and timing of the transport of birch trees to maximum the use of birch trees that will be cut for the log jack base design installation. MNRD requested input from Enbridge on the frequency and timing for transport of birch to the Bad River Firewood Bank.
  - Provide the final numbers, sizes, and locations of birch trees cut to MNRD within 7 days of the completion of the brushing/cutting activities; and
  - Compensate MNRD to purchase and plant an equivalent amount of birch trees by paying the MNRD-generated invoice. Birch cut not following the site-specific requirements will be charged with a higher rate.
- Due to the presence of oak wilt on the landscape, oak cannot be cut or damaged between April 1 and October 1 of each year (regardless of the size of the oak). If damage to oak occurs, then Enbridge is responsible for promptly reporting the damage to MNRD and implementing site-specific guidance from MNRD, such as immediate and thorough application of pruning sealer or tree paint over the wound. Torn branches or roots must be cut clean, and the cut surface painted. For additional protection, cover treated roots with soil. See this webpage for more information on oak wilt in Wisconsin:  
<https://dnr.wisconsin.gov/newsroom/release/54681#:~:text=If%20something%20wounds%20an%20oak,cover%20treated%20roots%20with%20soil.>
- Proper BMPs are implemented.
- Ecosystems and Biological Communities: Most of the ecosystems are in wetlands and water resource areas. The project will impact the macroinvertebrate community, potentially creating habitat for some taxa while reducing available habitat for others. The impacts should be small enough that the macroinvertebrate should return to a similar community make up after the removal of the log jacks. To further avoid and minimize impacts to the ecosystems and biological communities, MNRD recommends that Enbridge removes the section of the pipeline crossing Bad River and her floodplain at the same time as the removal of the log jacks (which is condition to occur by September 30, 2026) given the

remoteness of the pristine ecosystems. Refer to sections D and J above for additional information regarding ecosystems.

- **(L) the potential impact on visual resources, scenic views, and wilderness values;**
  - Visual resources: Impacts on visual resources will last the duration of the project but should be minimal post removal of the log jacks. The anticipated impacts to the visual resources will be minimized if BMPs and the conditions of permits and approvals are followed, the log jacks and all associated materials are removed by September 30, 2026, and the decommissioning and removal of the pipeline from the Bad River and her floodplain occurs within the same timeframe.
  - Scenic views: Impacts on scenic views will last the duration of the project but should be minimal post removal of the log jacks. The log jacks will impact the aesthetic value of this landscape while they remain in the Bad River. Their removal may alter the landscape and change the aesthetic value of the landscape, but the change should be minimal assuming BMPs and the conditions of permits and approvals are followed, the log jacks and all associated materials are removed by September 30, 2026, and the decommissioning and removal of the pipeline from the Bad River and her floodplain occurs within the same timeframe.
  - Wilderness values: The Bad River and her floodplain provide substantial wilderness values. The wilderness values will be impacted by the log jack installation and removal operations, with more minor impacts anticipated during maintenance and other phases. If activities are implemented in accordance with permits and approvals issued (including fully restoring the stie after log jacks are removed), then minimal impacts to the wilderness value are anticipated. Refer to sections (G) and (K) above for additional information regarding wildlife.
  
- **(M) potential generation of excessive noise, vibrations, light, or glare;**
  - Excessive noise: excessive noise should only occur during the construction, decommissioning, and maintenance phases. Generation of excessive noise must only occur during the daytime hours, and any excessive noise must be mitigated by both “source” and “path” controls, i.e., utilizing equipment that has a lower decibel output or utilizing barriers or other structures to control noise spillage.
  - Vibrations: vibrations should only occur during the construction, decommissioning, and maintenance phases. Any vibrations to ground or air, specifically regarding the project's use of helicopter flights, must be performed in a way that prevents injury and unreasonable annoyance to public or private properties outside the immediate work site.
  - Light: light should only occur during the construction, decommissioning, and maintenance phases. Lighting needs must be defined in the relevant construction, maintenance, and decommissioning plans, and according to OSHA standards. These plans may require lighting at night for immediate site safety and security, however, excessive site lighting beyond that which meets those standards must cease during the overnight hours.
  - Glare: glare should only occur during the construction, decommissioning, and maintenance phases. Reduction of glare, to the extent practicable, must be considered in all construction, maintenance, and decommissioning phases. Implementation of textured glass or anti-

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reflective coatings on machinery, directionality of the work itself relative to the time-of-day/sun, or installation of partitions, fencing, or barriers during construction, maintenance, and decommissioning must be utilized to mitigate glare from the ROW.

- **(N) potential impact on transportation networks.**
  - Impacts on transportation networks are likely to be limited to the duration when heavy equipment and/or heavy loads need to be transported within the Reservation associated with the construction (i.e., installation of log jack base design), adaptive management, and removal phases, and potentially during the maintenance phase. Applicable road use agreements must be in place and properly implemented to avoid, minimize, and/or mitigate impacts to the transportation networks; these agreements must be in place prior to the road use necessitating the agreement. Enbridge and their representatives (including contractors and subcontractors) must adhere to applicable speed limits. Enbridge must post appropriate signage as needed for safety and to minimize impacts to the transportation networks including, but not limited to, along Government Road and along the Bad River. Enbridge is working on obtaining the applicable road use agreements for the initial installation of the log jack (i.e., base design).

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