

**TO THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

In the Matter of Enbridge Line 5 Wisconsin Segment Relocation Project Wetland/Waterway Individual Permit No. IP-NO-2020-2-N00471 and coverage under WPDES General Permit No. WI-S067831-6 granted to Joe McGaver, Enbridge Energy, LP to construct a new crude petroleum pipeline segment

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DEC 12 2024

PETITION FOR CONTESTED CASE HEARING

Acting Secretary Steven Little
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707-7921

**WI DEPT. OF
NATURAL RESOURCES**

DEC 12 2024

**OFFICE OF THE
SECRETARY**



To the Department of Natural Resources:

350 Wisconsin, League of Women Voters of Wisconsin, and Sierra Club, by their attorney Midwest Environmental Advocates (“MEA”), and Clean Wisconsin (collectively, “Petitioners”), hereby request that a hearing be held as a contested case under Wis. Stat. §§ 281.36(3q), 30.209, and 227.42, and Wis. Admin. Code NR § 299.05(5)-(7). The agency actions for which the hearing request is being made are the above-captioned wetland and waterway individual permit (“the Permit”), the corresponding water quality certification (“WQC”), and the grant of coverage under General Permit No. WI-S067831-06 (“Stormwater GP”) (actions collectively, “Permit Decisions”) that the Wisconsin Department of Natural Resources (“DNR” or “the Department”) issued to Enbridge Energy, LP (“Enbridge”) for construction of the Line 5 Wisconsin Segment Relocation Project (“Line 5 Reroute” or “Reroute”). The Line 5 Reroute is a project to construct a new, over 40-mile segment of Enbridge’s Line 5 oil pipeline in northern Wisconsin. The Reroute would be constructed within the Bad River watershed through complex and ecologically sensitive

hydrogeology, crossing nearly 200 waterways and impacting hundreds of acres of wetlands, upstream of the Bad River Reservation, Lake Superior, and the Kakagon-Bad River Sloughs. A true and accurate copy of the Permit is attached to this Petition as Exhibit A. A true and accurate copy of the WQC is attached to this Petition as Exhibit B. A true and accurate copy of the Stormwater GP is attached to this Petition as Exhibit C.

PETITIONERS

The substantial interests of the undersigned Petitioners are injured in fact by DNR's Permit Decisions for the Line 5 Reroute. Those interests and the nature of the injuries are described below.

350 Wisconsin

350 Wisconsin is a statewide organization based in Madison, Wisconsin, that mobilizes grassroots power to change laws and policies to make transformational progress toward environmental justice and solve the climate crisis by 2030. The organization works to oppose fossil fuel infrastructure and to promote sustainable practices and clean renewable energy in Wisconsin communities. 350 Wisconsin has roughly 300 active members who reside across Wisconsin, including in Ashland and Iron Counties, where the Line 5 Reroute would be constructed. 350 Wisconsin works with Tribes, landowners, environmental advocates, and others to stop new oil pipelines and pipeline infrastructure from being built in Wisconsin due to the significant environmental impacts from both construction and operation of those pipelines.

350 Wisconsin and its members have a significant history of seeking environmentally sound outcomes while defending the rights of landowners and local communities throughout Wisconsin. Over its twelve-year history, 350 Wisconsin has assisted landowners with asserting their legal rights before Wisconsin courts and has advocated for policies that limit the power of

eminent domain in ways that diminish property rights and threaten the environment. 350 Wisconsin has also supported local communities who are concerned about continued reliance on fossil fuels as an energy source and the resulting adverse environmental and public health impacts of climate change. Rising water temperatures, increased precipitation, flash droughts and floods, and other well studied and documented climate change trends threaten water resources in Wisconsin. Climate change is exacerbating the spread of aquatic and wetland invasive species, contributing to large runoff events and harmful algal blooms, impeding public trust rights like navigation and recreation, and adversely impacting wetland functional values such as carbon sequestration and water filtration.

The group has further promoted its interest in these matters through public education on how the continued use of and reliance on fossil fuels, like those transported through Enbridge's Line 5, prevent a rapid and just transition away from fossil fuels and exacerbates environmental degradation driven by climate change. Permitting Enbridge's Line 5 Reroute would directly undermine the goals and efforts of 350 Wisconsin and its members in their communities and beyond. Construction of the Reroute would also impact 350 Wisconsin's members who rely on and use many of the same water resources mentioned above, which would be impacted by construction of the Reroute, for a variety of protected purposes. Accordingly, the DNR's Permit Decisions affect 350 Wisconsin's and its members' substantial interests.

League of Women Voters of Wisconsin

The League of Women Voters of Wisconsin ("the League") is based in Madison, Wisconsin, with approximately 2,600 members. The League operates at the state level with grassroots support from 21 local leagues, like the League of Women Voters of Ashland and Bayfield

Counties (“LWV-ABC”). The League is a non-partisan organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. As an organization, the League takes positions on key public policy issues after study, debate, and consensus by their membership and has been at the forefront of efforts to protect air, land, and water resources.

The League advocates for water quality improvements throughout the Great Lakes Basin with an emphasis on water pollution prevention. This advocacy includes the preservation and enhancement of the environmental integrity and quality of the Bad River Watershed and Lake Superior Basin. Additionally, the League promotes sustainable, efficient, and environmentally conscious methods for energy use to dramatically lower greenhouse gas emissions. Specifically, the League advocates against the construction of new oil and gas infrastructure that will be rendered obsolete by the expansion of renewable sources of energy. Further, the League supports Tribal sovereignty and treaty rights and recognizes the traditional and unique relationships the Bad River Band and other Tribes have with waters and aquatic beings in Wisconsin generally and in northern Wisconsin specifically.

The League, including LWV-ABC, has an interest in protecting the unique, remote, and ecologically sensitive terrain of northern Wisconsin where the Line 5 Reroute is proposed. Construction and operation of the Line 5 Reroute would result in actual and potential adverse impacts to wetlands, streams, and water bodies, as well as the flora and fauna that depend on them—impacts that are exacerbated by extreme weather events, like floods, that are intensifying and becoming more common. These adverse impacts would harm the League and its members’ interests in the integrity of the Bad River Watershed and Lake Superior Basin.

The Line 5 Reroute is inconsistent with the League’s positions regarding water quality

protection, reducing greenhouse gas emissions and advancing renewable energy, and their support of Tribal sovereignty and treaty rights. Members of the League also live, work, and recreate near the path of the Line 5 Reroute and other Line 5 segments, and those members include affected and abutting landowners. The actual and potential adverse environmental impacts from the proposed Line 5 Reroute would cause physical and economic damage to League members' properties, contaminate their drinking water, and prevent the quiet enjoyment of property of adjacent and nearby League member landowners. These same environmental impacts would also impair the ability of the League and its members to visit and enjoy their favorite spots for recreating, including harming their interests in fishing, paddling, hiking, skiing, biking, birdwatching, and more.

Permitting Enbridge's Line 5 Reroute is a final regulatory step that would facilitate the construction and continued operation of Line 5 through environmentally sensitive ecosystems and watersheds that the League advocates to protect, and where the League and its members live, work, and recreate. Accordingly, the Permit Decisions adversely affects the League's and its members' substantial interests.

Sierra Club

Sierra Club is a national, grassroots organization that amplifies the power of its members and supporters to defend the right to a healthy world and to ensure a safe, livable climate for future generations. Sierra Club-Wisconsin is Sierra Club's Wisconsin chapter, with approximately 12,000 members throughout the state, many of whom live, work, and recreate near the Line 5 Reroute and other Line 5 segments. Sierra Club and its members have worked tirelessly to promote both energy conservation and clean energy alternatives to fossil fuel infrastructure projects. This work not only addresses the adverse environmental, public health, and economic impacts due to

the transportation and ultimate combustion of fossil fuels, but also the immediate adverse environmental and public health impacts that occur from pipeline construction.

The Line 5 Reroute is contrary to the goals of Sierra Club and its members because the Reroute would endanger Wisconsin's waters, entrench fossil fuel infrastructure in northern Wisconsin for generations to come, and promote continued reliance on fossil fuels rather than energy conservation and clean energy alternatives. Construction of the Line 5 Reroute and the continued operation of Line 5 would also result in adverse environmental, public health, and economic impacts that Sierra Club and its members seek to prevent. Sierra Club's members who live, work, and recreate near the permitted Line 5 Reroute and other Line 5 segments are particularly at risk from those adverse impacts. Accordingly, DNR's Permit Decisions for this project affect Sierra Club's and its members' substantial interests.

Clean Wisconsin

Clean Wisconsin is a nonprofit membership organization dedicated to environmental education, advocacy, and legal action to ensure a safe, healthy future for every Wisconsin community by fighting climate change and pollution. Clean Wisconsin has an active membership and advocacy base totaling more than 20,000 individuals, including over 125 members in Ashland and Iron Counties. Founded in 1970 as Wisconsin's Environmental Decade, for over 50 years Clean Wisconsin has advocated to protect its members' interests in the air they breathe, water they drink, and beautiful, natural places they enjoy. Among those places are Wisconsin's rivers, streams, wetlands, and two Great Lakes. The Lake Superior region provides a range of ecological services and is critical to numerous culturally treasured pastimes and ways of life in Wisconsin, including hunting, fishing, and wild rice harvesting. Clean Wisconsin has also expended

significant time and resources ensuring DNR's proper administration of the wetland and waterway permit programs, such as past litigation over controversial permits for wetland fill. Given Clean Wisconsin's mission of environmental protection in Wisconsin and the fact that many of its members live in or otherwise enjoy northern Wisconsin, the organization and its members are adversely affected by DNR's Permit Decisions.

ISSUES ON REVIEW

Petitioners challenge DNR's Permit Decisions on the basis that those decisions violate Wisconsin law, including but not limited to, Wis. Stat. chs. 30 and 283, Wis. Stat. §§ 1.11 and 281.36, and Wis. Admin. Code NR chs. 102, 103, 150, 205, 216, 299, 345, and 350. DNR's Permit Decisions are premised on erroneous interpretations of law, rely on findings of fact that are not supported by sufficient evidence, and fail to adequately consider facts that compel denial of the Permit, WQC, and coverage under the Stormwater GP. Petitioners hereby commit to appear at the administrative hearing and present information supporting Petitioners' objections as required by Wis. Stat. §§ 281.36(3q)(c)3 and 30.209(1m)(b)3 and Wis. Admin. Code NR § 299.05(5). In support of this Petition, Petitioners object to DNR's Permit Decisions on the bases established below.

Wetland Individual Permit—Objections Arising Under Wis. Stat. § 281.36(3q)

Any interested person may file a petition with DNR for administrative review of the Department's decision to issue a wetland individual permit. Wis. Stat. § 281.36(3q)(b). If the petitioner is not the permit applicant, the petition must sufficiently describe the objection to allow DNR to determine which provisions petitioner believes may be violated and sufficiently describe

the facts supporting the petition so DNR can determine how the petitioner believes the discharges may result in a violation of law. Wis. Stat. § 281.36(3q)(c)1-2. The petition must also contain a “commitment by the petitioner to appear at the administrative hearing and present information supporting petitioner’s objection.” Wis. Stat. § 281.36(3q)(c)3.

Petitioners are “interested person[s]” within the meaning of Wis. Stat. § 281.36(3q)(b) for the reasons stated above. *See supra* pp. 2-7. This Petition is timely filed, and Petitioners have committed to appearing at the hearing and presenting supporting information. *See supra* p. 7. The Permit does not meet the standards in Wis. Stat. § 281.36(3n)(c). Therefore, DNR’s issuance of the Permit is erroneous and must be reversed.

DNR may not issue a wetland individual permit unless it finds: (1) the proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts; (2) all practicable measures to minimize the adverse impacts to wetland functional values will be taken; and (3) the proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences. Wis. Stat. § 281.36(3n)(c). DNR must consider five factors when assessing impacts to wetland functional values: direct, cumulative, and secondary impacts to wetland functional values, the impact on functional values resulting from mitigation, and the net positive or negative environmental impact of the proposed project. Wis. Stat. § 281.36(3n)(b).

The objections to issuance of the wetland individual permit and facts supporting those objections are as follows.

OBJECTION 1: DNR lacks information sufficient to consider the factors in Wis. Stat. § 281.36(3n)(b) that must be used in assessing impacts to wetland functional values and thus could not determine that the standards for permit issuance in Wis. Stat. § 281.36(3n)(c) have been met.

The facts supporting the objection that DNR lacked information sufficient to adequately consider the required factors include DNR's reliance on incomplete and vague construction, restoration, and monitoring plans; incomplete and inadequate submissions of information by the applicant to the Department regarding baseline environmental conditions, site characteristics, and pre-construction wetland functioning; and other assertions by Enbridge that are not supported by adequate factual evidence. DNR also lacks information necessary to meaningfully apply the required factors because it is not in possession of basic information needed to assess impacts to wetland functional values caused by various construction activities, including horizontal directional drilling ("HDD"), blasting, dewatering, and others.

OBJECTION 2: DNR's decision to issue a wetland individual permit for the proposed Reroute violates Wis. Stat. § 281.36(3n)(c)2 because the Line 5 Reroute would not take all practicable measures to minimize the adverse impacts to wetland functional values.

The facts supporting this objection include, but are not limited to:

- a. The environmental construction plan ("ECP") and the plans it incorporates by reference, including the wetland and waterbody restoration and monitoring plan, blasting plan, and noxious and invasive species management plan, are incomplete, inadequate, speculative, and vague, and therefore DNR's reliance on the ECP and its plans to conclude Enbridge would take all practicable measures to minimize adverse impacts to wetland functional values is erroneous;
- b. Construction methods, best management practices ("BMPs"), and other efforts to

minimize impacts required by permit conditions and the plans they incorporate would not succeed in minimizing impacts because those practices routinely fail, are inappropriately used, or simply are not designed to address the construction challenges presented; and

- c. Practicable measures to minimize adverse impacts to wetland functional values exist but are not being proposed for use by Enbridge or required by DNR.

Accordingly, Petitioners dispute Exh. A, Findings of Fact 48-50, 54-56, and all other factual findings on which DNR's conclusion that the Reroute would take all practicable measures to minimize the adverse impacts to wetland functional values are based.

OBJECTION 3: DNR's decision to issue a wetland individual permit for the proposed Reroute violates Wis. Stat. § 281.36(3n)(c)3 because DNR lacks an adequate factual basis to find that the Line 5 Reroute will not result in significant adverse impacts to wetland functional values, will not adversely affect water quality, and will not result in other significant adverse impacts.

The facts supporting this objection include, but are not limited to:

- a. DNR lacks information sufficient to fully assess the types of wetlands that would be impacted, their acreage, and their functional value.
- b. Based on the information available, DNR understates the acreage and functional value of the wetlands that would be impacted. Exh. A, Findings of Fact 36-39. Even with that understatement, DNR acknowledged that, based on Enbridge assessments, the wetlands that would be impacted by the proposed project include many wetlands with "high" or "exceptional" functional values, including for wildlife habitat, flood and stormwater storage, water quality protection, and ground water processes. Exh. A, Findings of Fact 28-32.

- c. The Reroute would cause significant adverse impacts to wetland functional values by:
- i. impairing storm and flood water storage and retention and the moderation of water level fluctuation extremes;
 - ii. impairing wetland hydrological functioning;
 - iii. altering and impairing the wetlands' ability to filter and/or store nutrients, sediments, or toxic substances;
 - iv. impairing shoreland protection values;
 - v. impairing wetland habitat for both aquatic organisms and residents and transient wildlife; and
 - vi. impairing the recreational, cultural, educational, scientific, and natural scenic beauty values and uses in the affected wetlands.
- d. These impacts would be caused by construction activities including, but not limited to, trenching, digging, grading, blasting, HDD, removal, sequestration, and backfilling of soils; operation of heavy machinery; dewatering activities; and vegetation removal. These activities would alter hydrology, disturb sensitive wetland soils, destroy habitat, increase sedimentation, reduce water quality, introduce and spread invasive species, and cause other adverse impacts to wetland functional values.
- e. DNR mischaracterizes impacts to wetland functional values that would be caused by the Reroute as temporary when they would be permanent or, at a minimum, characterizes impacts to wetland functional values as temporary when it lacks information sufficient to reasonably conclude that impacts would be merely

temporary.

- f. DNR understates the loss of wetland functional values associated with wetland conversion, including by treating conversion of forested wetlands as “temporary” when it would take multiple decades for vegetation to re-grow to pre-construction conditions, even under long-term management.
- g. Reroute construction activities would cause direct impacts to wetland functional values. DNR’s finding that the direct impacts from clearing and pipeline installation would be temporary is not supported by the available information. Exh. A, Findings of Fact 36, 59. These direct impacts would also not be confined to the construction right of way, much less the trenchline, given the extent of the above-described construction activities, *see supra* Objection 3.d, and the interconnected nature of the wetland complexes the Reroute would cross. DNR thus understates the extent of direct impacts to wetland functional values.
- h. The cumulative impacts to wetland functional values attributable to the Reroute that may occur would be significant and adverse. The cumulative impacts that may occur include those acknowledged by DNR in Exh. A, Finding of Fact 44(b), but also include impacts attributable to the Reroute but not considered by DNR, such as impacts to wetlands caused by grading and re-grading activities that would be necessary to restore wetland topography and hydrological functioning in locations where restoration following construction fails.
- i. The Reroute would cause significant adverse secondary impacts on wetland functional values. DNR acknowledges potential secondary impacts. Exh. A, Finding of Fact 44(c). However, DNR understates the extent of potential secondary

impacts, failed to properly weigh this factor in its analysis, and lacked information necessary to exclude other potential secondary impacts. Potential secondary impacts caused by the Reroute include, but are not limited to, hydrologic impacts, destruction or diminishment of habitat through fragmentation and other impacts, spread of invasive species, impacts to functional values from maintenance activities, sedimentation, and erosion.

- j. Taken together, the direct, secondary, and cumulative adverse impacts to wetland functional values resulting from the Reroute would be significant.
- k. Any positive impact on wetland functional values resulting from the mitigation required by the Permit would not be sufficient to compensate for these significant adverse impacts to wetland functional values. This is due to fundamental problems with the required mitigation. *See infra* Objection 4.
- l. The Reroute would cause net negative environmental impacts. DNR acknowledges that the Reroute would result in net negative environmental impacts, but this acknowledgement understates the true extent of the net negative environmental impact of the Reroute. *See* Exh. A, Finding of Fact 44(e).
- m. Conditions included in the Permit would not avoid or minimize these significant adverse impacts to wetland functional values, or result in successful on-site wetland restoration because, among other reasons:
 - i. Efforts to limit the introduction and spread of new or existing invasive or noxious species would not be successful, resulting in greater penetration and extent of invasives cover relative to current conditions in wetlands throughout the construction area—and well beyond the permanently

maintained corridor. These conditions are inadequate because, among other reasons, they rely on an Invasive and Noxious Species Management Plan that is inadequate, vague, and not supported by evidence of efficacy. Exh. A, Conditions 56-83.

- ii. Sediment and erosion control BMPs would not avoid or minimize impacts to wetlands because those BMPs routinely fail, are inappropriately used, or simply are not designed to address the construction challenges presented. Exh. A, Conditions 97-122.
- iii. Limits on blasting would not avoid or minimize impacts to wetlands because the blasting plan's measures to limit impacts are inadequate, vague, and not supported by evidence of efficacy. Exh. A, Conditions 123-127.
- iv. General wetland conditions are inadequate, vague, and not supported by evidence of efficacy. Exh. A, Conditions 205-234.
- v. There is inadequate baseline data to effectuate restoration, the required wetland monitoring is inadequate, and performance standards are irredeemably vague or insufficient to ensure successful restoration. Exh. A, Conditions 239-250.
- vi. The underlying difficulty involved in restoring these wetlands, especially the forested wetlands that would be cleared of vegetation and other high-quality wetlands, is extraordinarily high. The absence of a comprehensive, adequate restoration plan in this context means construction impacts would certainly not be temporary and instead are likely to be permanent.

- n. In sum, permit conditions requiring Enbridge to implement its ECP and follow other practices would be insufficient to ensure that wetland functional values are protected because they depend on Enbridge's insufficient plans; vague requirements; or flawed avoidance, minimization, or restoration practices.
- o. Accordingly, the Reroute would cause significant adverse impacts to wetland functional values, restoration plans would not successfully restore those functions, and mitigation is inadequate. Exh. A, Finding of Fact 59.
- p. The Reroute would also result in a significant adverse impact to water quality because, among other reasons, it would result in increased sedimentation; decreased dissolved oxygen; changes to water flow, temperature, and pH; and decreased filtration through impairment of wetland functioning. These impacts would follow from the above-discussed construction activities which would alter hydrology; introduce contaminants, including from the spill or leaking of oil and gas carried by the pipeline; increase sedimentation through erosion and vegetative clearing; and otherwise alter wetlands and adjacent waterways.
- q. The Reroute would result in other significant adverse environmental consequences because, among other reasons:
 - i. It facilitates the continued use of fossil fuels and thus results in environmental consequences attendant to the production, transport, and consumption of those fuels. DNR acknowledges this fact but finds these impacts to not be significant based on its expectation that Line 5 would be a "comparably reliable" mode of energy transport. Exh. A, Finding of Fact 62(a). Petitioners dispute this factual conclusion and the adequacy of

DNR's consideration of continued fossil fuel use as an adverse environmental consequence under Wis. Stat. § 281.36(3n)(c)3.

- ii. It creates a serious and ongoing risk of oil spill, leak, or other type of discharge of oil to the environment. DNR's consideration of this consequence is inadequate because it lacks information to conclude the risk of a spill is as insignificant as it claims, understates and/or fails to weigh the environmental devastation that would be caused by a spill, and overstates the ability of Enbridge to contain an oil spill and limit its environmental effects. Exh. A, Finding of Fact 62(b).
- iii. It would result in significant impacts from "inadvertent" releases of drilling fluid into the environment from HDD. The modeling used to calculate the risk of these releases is based on incorrect assumptions and is therefore highly flawed. This flawed modeling would lead to greater losses in drilling fluid than anticipated, which would significantly impair water quality parameters, including but not limited to turbidity and pH. The incorrect assumptions and flawed modeling also significantly understate the risk of adverse impacts to the hydrogeological regime in the area. Any release of drilling fluids into groundwater or surface water is a discharge of pollutants to waters of the state from a point source, which requires a water pollution permit under Wis. Stat. ch. 283.

OBJECTION 4: DNR's decision to issue the Permit violates Wis. Stat. § 281.36(3n)(d) and (3r) and Wis. Admin. Code NR §§ 350.005 and 350.011 because the mitigation required by the Permit is inadequate. The facts supporting this objection include, but are not limited to:

- a. The amount of compensatory mitigation required is predicated on an erroneous determination of the Reroute’s impact on wetland functional values, and on a construction plan and restoration plan that overstate Enbridge’s ability to avoid and/or minimize impacts and to restore impacts that are not avoided or minimized. Exh. A, Conditions 206-207, Finding of Fact 58. Consequently, DNR errs by requiring Enbridge to mitigate for only a portion of what the Reroute’s actual impact to wetland functional values would be, and the Permit is inadequate to ensure compliance with the requirement that impacts to wetland functional values that are not avoided be compensated for. Exh. A, Finding of Fact 59.
- b. The wetland and waterbody restoration and post-construction monitoring plan lacks adequate baseline information, monitoring and management plans, and performance standards. Critical elements that must be present for the Department to conclude activities proposed to restore disturbed areas to their pre-construction condition and functioning can succeed are absent or deferred.

OBJECTION 5: For both the same reasons and on the same facts disputed in Objections 15 and 16, *infra*, the Permit is invalid because the underlying Final Environmental Impact Statement (“EIS”) fails to consider all reasonable alternatives to the Reroute, including those alternatives that would accomplish an “altered purpose”¹ other than facilitating the continued operation of Line 5, in violation of Wis. Admin. Code NR § 150.30(2)(e) and the Wisconsin Environmental Policy Act (“WEPA”), Wis. Stat. § 1.11(2)(c)3.

¹ Wis. Admin Code NR § 150.03(2) defines “[a]lternatives” as “other actions or activities which may be reasonably available to achieve the same *or altered purpose* of the proposed action or project, including the alternative of no action.” (emphasis added.)

Waterway Individual Permit—Objections Arising Under Wis. Stat. § 30.209

Wis. Stat. § 30.209 authorizes “[a]ny interested person [to] file a petition with the department for administrative review within 30 days after” DNR issues an individual waterway permit or fails to impose a term or condition on such a permit under Wis. Stat. ch. 30, subch. II. Wis. Stat. § 30.209(1m)(a)1-2. If the petitioner is not the permit applicant, the petition must sufficiently describe the objection and the facts supporting the objection so DNR can determine which legal provisions may be violated and how the petitioner believes those provisions may be violated. Wis. Stat. § 30.209(1m)(b)1-2. The petition must also contain a “commitment by the petitioner to appear at the administrative hearing and present information supporting petitioner’s objection.” Wis. Stat. § 30.209(1m)(b)3.

Petitioners are interested in DNR’s Permit Decisions for the reasons stated above. *See supra* pp. 2-7. This Petition is timely filed, and Petitioners commit to appearing at the hearing and presenting supporting information. *See supra* p. 7. The objections to issuance of the waterway individual permit and facts supporting those objections are as follows:

OBJECTION 6: DNR’s issuance of the waterway individual permit to Enbridge violates Wis. Stat. §§ 30.12(1), 30.12(3m)(a), 30.12(3m)(c)2, and 30.133(1) because Enbridge lacks the property interests in each navigable water necessary to make it eligible for a permit under Section 30.12.

No person may deposit any material or place any structure upon the bed of a navigable waterway unless an individual or general permit has been issued. Wis. Stat. § 30.12(1). Only a riparian owner may apply for such an individual permit. Wis. Stat. § 30.12(3m)(a). Further, “[n]o owner of riparian land that abuts a navigable water may grant by an easement or by a similar conveyance any riparian right in the land to another person, except for the right to cross the land

in order to have access to the navigable water.” Wis. Stat. § 30.133(1). “This right to cross the land may not include the right to place any structure or material.” *Id.* DNR shall issue an individual permit to a riparian owner only if it finds that the structure or deposit is not detrimental to the public interest. Wis. Stat. § 30.12(3m)(c)2. Finally, every violation of Chapter 30 is a public nuisance *per se*. Wis. Stat. § 30.294.

The following facts support the Petitioners’ objections to the issuance of the Permit on this basis:

- a. The Permit authorizes Enbridge to engage in in-stream activities, including but not limited to water crossing, bank stabilization, erosion control, and dry trenching, which require Enbridge to deposit material and place temporary and permanent structures on the beds of navigable waterways along the Line 5 Reroute.
- b. DNR issued the Permit without information sufficient to establish that Enbridge had the necessary property interests to be eligible under Wis. Stat. § 30.12, and did not make the requisite finding of fact in the Permit that Enbridge has the necessary property interests.
- c. Enbridge has only obtained temporary and permanent easements from riparian owners along the Line 5 Reroute, instead of obtaining title to riparian properties in fee simple.
- d. The issuance of the Permit under Wis. Stat. § 30.12, which is explicitly reserved for riparian owners, to a non-riparian is inherently detrimental to the public interest and is a public nuisance.

Whether Enbridge has the necessary property interests to engage in activities under Wis. Stat. § 30.12 is a material fact that Petitioners dispute. Petitioners also dispute Findings of Fact

71.b and 72.b in Exhibit A that “[t]he structure or deposits will not be detrimental to the public interest” and any other factual findings from which DNR concludes that Enbridge has the necessary property interests.

OBJECTION 7: DNR did not have sufficient information to determine that issuance of the waterway individual permit to remove material from the beds of navigable waters “will be consistent with the public interest in the lake or stream,” which violates Wis. Stat. § 30.20(2)(c) and Wis. Admin. Code NR § 345.04(3)(c)1.

Under Wis. Stat. § 30.20(1), “no person may remove any material from the bed of any . . . navigable stream” without first entering a contract with DNR or without being issued a general or individual permit by DNR. To issue an individual permit, DNR must find “that the issuance of the permit will be consistent with the public interest in the lake or stream.” Wis. Stat. § 30.20(2)(c). The public interest includes the public’s fullest use of the waters, which itself includes, but is not necessarily limited to, public trust uses such as navigation, hunting, fishing, recreation, and scenic beauty, as well as the hydrogeological conditions that support those uses. Riparian rights, much less the rights of non-riparians, are also subordinate to public rights in navigable waters. Issuance of the Permit is not consistent with the public interest in navigable waters identified for the removal of material because adequate water quality and water quantity are necessary to support the public’s fullest use of those waters. By issuing the Permit, DNR has subordinated the public interest to a non-riparian, Enbridge, in violation of the statutory and administrative provisions identified immediately above and Wis. Const., art. IX, § 1.

The following facts support Petitioners’ objection to the issuance of the Permit on this basis:

- a. The waterways identified for the removal of material are navigable, and the public uses those navigable waters for the purposes of, including but not limited to, navigation, hunting, fishing, recreation, and/or scenic beauty.
- b. DNR neither had sufficient geotechnical information to determine which waterway crossings would definitively require blasting nor had sufficient geotechnical, hydrological, water quality, and other information to determine the impacts on the public interest in those navigable waters identified as candidates for blasting and downstream navigable waters.
 - i. For example, DNR lacked basic, yet key, site-specific information at candidate blasting sites such as rock fracture classifications and designations, rock strength, and other dynamic properties like the stiffness of the materials to be blasted and those of the immediately surrounding area.
 - ii. DNR also lacked basic information about the relationship between candidate blasting sites and the stability of slopes in and around those sites, particularly slopes of significant grade.
- c. Blasting the bedrock in navigable waters at candidate blasting sites would irrevocably alter the hydrogeology at those sites, both in the short and long term, and have substantial impacts on water quality, water quantity, and fish and wildlife habitat, which in turn would substantially impact the public's fullest use of those navigable waters.
- d. Blasting in the candidate navigable waters would impact the baseflow of those waters and downstream waters and the public interest therein by, including but not

limited to, increasing channel instability, increasing erosion and sedimentation, altering water temperatures, altering pH, decreasing dissolved oxygen, reducing fish and wildlife habitat, and decreasing the flood flow capacity of navigable waters.

- e. The geologic features in and underlying navigable waters that are candidates for blasting cannot be restored once they have been damaged with explosives, and the hydrology of the surrounding area cannot be restored to sufficiently minimize impacts on the public interest.
- f. Impacts from blasting on the surrounding hydrogeology would also be exacerbated in the long term as the portions of the fracture zone outside the excavated trenches at candidate blasting sites that cannot be removed continue to undergo repeated natural processes like freezing and thawing.
- g. New fractures in the bedrock from blasting would also connect to existing fractures, significantly expanding the area of impact on hydrogeological regimes beyond the immediate blasting site.
- h. DNR had insufficient information to adequately determine the water quality impacts on the public interest in those navigable waters identified for dredging.
- i. Dredging would result in the release of sediment and increase erosion, adversely impacting water quality and fish and wildlife habitat.
- j. Increased sedimentation from dredging would be exacerbated by sedimentation and erosion from land disturbances above the ordinary high-water mark and inadequately regulated through the Stormwater GP. *See infra* Objections 13-14.

- k. The plans and information Enbridge submitted to DNR, Enbridge's factual assertions, and other information on which DNR relies to determine that water quality, hydrology, and bed contours would be restored and water quality impacts would be sufficiently minimized from the removal of material from the bed of navigable waters are incomplete, generic and vague, and are not supported by adequate factual evidence.
- l. The relevant conditions contained in the Permit would not sufficiently minimize impacts to the public interest from the removal of materials from the bed of navigable waters.
- m. Enbridge is not a riparian owner at the navigable water crossings identified for the removal of material, has no riparian rights in those waters, and thus has a negligible interest in the use of those waters.
- n. The Permit authorizes in-stream activities that, individually and cumulatively, would significantly impact the public's fullest use of navigable waters for the purposes of, including but not limited to, navigation, hunting, fishing, recreation, and/or scenic beauty.

Accordingly, issuance of the Permit under Wis. Stat. § 30.20 is not consistent with the public interest, and Petitioners dispute, Findings of Fact 60, 61, 67, 70, and 74 in Exhibit A, and any other factual findings from which DNR concludes that issuance of the permit is consistent with the public interest.

OBJECTION 8: DNR's issuance of the waterway individual permit violates Wis. Admin. Code NR § 345.04(3)(a)2.b, and thus Wis. Stat. § 30.20(2)(c), because the Department has acknowledged the potential that the Reroute would impact an endangered or threatened species

but has not issued Enbridge an incidental take permit pursuant to Wis. Stat. § 29.604.

Wis. Stat. § 30.20(2)(c), which governs the removal of material from the beds of navigable waters, requires DNR to determine that issuance of the Permit “will be consistent with the public interest in the lake or stream.” Wis. Admin. Code NR ch. 345 implements Wis. Stat. § 30.20 and prohibits DNR from issuing a permit that has the potential to impact endangered or threatened species until “the applicant submits documentation to demonstrate . . . [that t]he project avoids impacts to endangered or threatened species . . . [or that t]he project has received an incidental take authorization.” Wis. Admin. Code NR § 345.04(3)(a)2.b.

The following facts support Petitioners’ objection to issuance of the Permit on this basis:

- a. The Reroute has the potential to impact Braun’s Holly Fern, a threatened species under Wisconsin’s Endangered Species Act, Wis. Stat. § 29.604.
- b. Enbridge has not submitted sufficient documentation that the Reroute avoids impacts to Braun’s Holly Fern.
- c. The Permit acknowledges that Enbridge had not received an incidental take permit pursuant to Wis. Stat. § 29.604 at the time the Permit was issued. *See* Exh. A, Condition 84.
- d. DNR’s issuance of the Permit without an incidental take permit violates Wisconsin law and is inconsistent with the public interest.

Accordingly, Petitioners dispute Finding of Fact 77 in Exhibit A and any other factual findings from which DNR concludes that Enbridge has met the permitting requirements under Wis. Stat. § 30.20(2)(c) and Wis. Admin. Code NR § 345.04(3)(a)2.b.

OBJECTION 9: For both the same reasons and on the same facts disputed in Objections 15 and 16, *infra*, the Permit is invalid because the underlying Final EIS fails to consider all

reasonable alternatives to the Reroute, including those alternatives that would accomplish an “altered purpose” other than facilitating the continued operation of Line 5, in violation of Wis. Admin. Code NR § 150.30(2)(e) and WEPA, Wis. Stat. § 1.11(2)(c)3.

Objections Arising Under Wis. Stat. § 227.42

In addition to the right to a hearing accorded by Wis. Stat. §§ 281.36(3q) and 30.209, Petitioners also have the right to a contested case hearing under Wis. Stat. § 227.42(1) if: (a) a substantial interest of the person is injured in fact or threatened with injury by agency action or inaction; (b) there is no evidence of legislative intent that the interest is not to be protected; (c) the injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and (d) there is a dispute of material fact.

Petitioners satisfy these criteria for the following reasons:

The substantial interests of the undersigned Petitioners are injured in fact by DNR’s Permit Decision. Petitioners’ interests and nature of injuries are described above. *See supra* pp. 2-7.

The basis for a finding that there is no evidence of legislative intent that the interest is not to be protected is Wis. Stat. §§ 281.36(3q) and 30.209, which allow any “interested person” to file a petition for administrative review of any issuance of wetland and waterway individual permits, respectively. Additional authority for this petition is found in Wis. Admin. Code NR § 299.05(5), which provides a right to administrative review to “[a]ny person whose substantial interests may be affected” by DNR’s WQC decision. Wis. Stat. § 227.42 further allows Petitioners to request a contested case hearing to challenge an agency action such as the issuance of the Permit, WQC, grant of coverage under the Stormwater GP, and compliance with WEPA.

The injury to the Petitioners requesting the hearing is different in kind and degree from

injury to the general public caused by the DNR's Permit Decisions. Members of Petitioners' organizations live, work, and recreate near and directly adjacent to the Line 5 Reroute and would therefore be uniquely affected by DNR's decision to permit its construction. Further, Petitioners are, as described above, mission-driven to protect freshwater resources and improve water quality in Wisconsin and specifically throughout the Great Lakes Basin, prevent new fossil fuel infrastructure projects in Wisconsin, promote just transitions to clean energy alternatives and reduce greenhouse gas emissions, protect overall environmental and public health, and ensure a safe, livable climate for future generations. As such, Petitioners have special organizational interests that are injured by the Reroute, which would contaminate and otherwise impact water resources, destroy wetland functional values, prolong reliance on fossil fuels, contribute to the climate crisis, and endanger the entire Bad River watershed and Lake Superior.

Since the right to a hearing under Wis. Stat. § 227.42 is “in addition to any other right provided by law,” Petitioners hereby incorporate and reallege each objection arising under Wis. Stat. §§ 281.36 and 30.209, and the facts supporting those objections. *See supra* Objections 1-9. Those objections present numerous disputes of material fact.

Petitioners further object to DNR's Permit Decisions under Wis. Stat. § 227.42 on the bases discussed below.

Water Quality Certification

Wis. Admin. Code NR § 299.05(5) provides the right for “[a]ny person whose substantial interests may be affected” by a grant of WQC to, within 30 days of the agency action, request a contested case hearing pursuant to Wis. Stat. ch. 227. In addition to requirements under Wis. Stat. § 227.42, an objection under Wis. Admin. Code NR § 299.05(5) shall allege specific reasons why

the proposed activity violates water quality standards (“WQS”) enumerated in Wis. Admin. Code NR § 299.04(1)(b) and shall contain specific information regarding petitioner’s adversely affected interests. The petition must also include a commitment that the “petitioner will appear and present information supporting the petitioner’s objections in a contested case hearing.” Wis. Admin. Code NR § 299.05(5).

Petitioners object to the DNR’s grant of WQC to Enbridge because the Reroute does not comply with Wisconsin WQS. Petitioners are interested in DNR’s Permit Decisions for the reasons stated above. *See supra* pp. 2-7. This Petition is timely filed, and Petitioners have committed to appearing at the hearing and presenting supporting information. *See supra* p. 7. Additionally, Petitioners satisfy requirements for administrative review set forth in Wis. Stat. § 227.42. *See supra* pp. 25-26. The objections to the grant of WQC and facts supporting those objections are as follows:

OBJECTION 10: The Reroute violates wetland WQS related to the protection, maintenance, and enhancement of wetland functional values enumerated in Wis. Admin. Code NR § 103.03.

The following facts support the Petitioners’ objections to the issuance of the WQC on this basis:

- a. Construction activities associated with the Reroute, including but not limited to vegetation clearing, grading, trenching, blasting, HDD, placement of construction matting, and operation of vehicles and equipment, would take place in and near wetlands. Resulting consequences for impacted wetlands include altered site hydrology and wetland substrate, increased sedimentation and decreased filtration capabilities, habitat destruction, etc.—adverse impacts to wetland functional values

that would not be avoided or minimized.

- b. The hydrologic functions such as streamflow and groundwater discharges and recharges would be irreversibly altered during construction of the Reroute and constitute a violation of Wis. Admin. Code NR § 103.03(1)(b) and (2)(e). Conditions prohibiting alterations to site hydrology or requiring that alterations be restored to pre-construction condition are conclusory, based on plans that are vague, inadequate, and not supported by sufficient evidence or baseline information. *See* Exh. B, Conditions 11, 65. This problem is particularly acute for sensitive, ecologically critical hydrological features in wetlands, like seeps and springs, which are easy to disturb and difficult, if not impossible, to fully restore, even with perfect information and adequate plans, which DNR has not been provided. Petitioners accordingly dispute Findings of Fact 52, 53, and 56 in Exhibit B.
- c. The Reroute would violate wetland WQS set forth in Wis. Admin. Code NR § 103.03(1)(c) and (e)1.
 - i. Wetland functional values of filtration or storage of sediments, nutrients, and toxic substances that would otherwise adversely impact the quality of waters of the state would not be protected, nor would conditions necessary to support this functional value be maintained, if the Reroute proceeds as permitted.
 - ii. The WQC was granted on the condition that Enbridge follows an erosion control plan, as required for coverage under the Stormwater GP. Exh. B, Condition 16. However, the erosion control plan is deficient, vague, and generic without sufficient baseline data or proper implementation

strategies. Enbridge is unable to determine impacts to water quality, let alone mitigate for those impacts, without clearly defined water quality criteria and differences for monitoring. Petitioners dispute Finding of Fact 53 in Exhibit B.

- iii. Furthermore, sediment and erosion control BMPs would not bring the Reroute into compliance with wetland WQS because the BMPs are not adequate to avoid or minimize impacts to wetlands. *See infra* Objection 4.
- d. Mitigation required by the Permit is inadequate and would not restore wetland functional values. Sufficient baseline information is absent from the wetland and waterbody restoration and post-construction monitoring plan. The performance standards and monitoring and management plans are similarly insufficient to ensure mitigation for loss of wetland functional values. Petitioners therefore dispute Findings of Fact 38, 39, 51, and 52 in Exhibit B.
- e. Additional allegations of adverse impacts to wetland functional values are included in Objection 4, *infra*.

In addition to disputes of fact stated above, Petitioners further dispute Findings of Fact 49 and 59 in Exhibit B, and any other finding of fact from which DNR concludes the Reroute complies with Wisconsin's wetland WQS.

OBJECTION 11: The Reroute violates Wis. Admin. Code § 102.04(1) and (4) related to public rights in waters of the state, and fish and aquatic life, respectively.

The following facts support the Petitioners' objections to the issuance of the WQC on this basis:

- a. Blasting in the bedrock of navigable waterways would, among other harms, increase erosion and sedimentation, and impede public rights to navigability, recreation, and scenic beauty.
- b. Construction activities associated with the Reroute, including but not limited to blasting the bedrock of navigable waters, would decrease dissolved oxygen levels, alter pH levels, and increase water temperatures.

Petitioners dispute Findings of Fact 60-62 in Exhibit B and all other findings of fact on which DNR bases its assumption that the Reroute will comply with Wisconsin surface WQS.

OBJECTION 12: DNR does not have reasonable assurance that the Reroute will comply with WQS enumerated in Wis. Admin. Code NR § 299.04(1)(b) and Wis. Admin. Code NR chs. 102 and 103.

- a. The WQC was granted on the condition that Enbridge shall “monitor dewatering discharge at a rate that is sufficient to meet the turbidity standards at all times” and “shall not discharge at a rate or volume that will increase erosion in the receiving water.” Exh. B, Conditions 135 and 136. Enbridge's methods for monitoring turbidity are not supported by current scientific understanding.
- b. The WQC was granted on the condition that Enbridge perform water quality monitoring in accordance with the monitoring plan in the ECP. Exh. B, Condition 143. The water quality monitoring plan is deficient for the following reasons, among others:
 - i. The plan lacks adequate baseline data upon which to compare pre- and post- construction monitoring for water quality impacts.
 - ii. Plans to monitor macroinvertebrates are lacking in detail. For instance,

- multiple biotic indices are to be used, but the plan does not specify the locations for sampling nor procedures for monitoring.
- iii. The plan does not account for variability in water quality for upstream versus downstream waters, which inform determinations regarding water quality impacts and restoration and efforts.
 - iv. Where the plan requires monitoring for “notable” differences, it fails to define the criteria for determining those differences.
- c. The WQC was granted on the condition that “sheet pilings shall not be installed to a depth that would intersect known artesian aquifers based on available geotechnical information and well drilling logs.” Exh. B, Condition 208. However, Enbridge lacks the necessary geotechnical baseline data to comply with this condition.

Accordingly, Petitioners dispute Findings of Fact 60-62 in Exhibit B and any other factual findings from which DNR concludes that it has reasonable assurance that the Reroute would comply with WQS.

Stormwater GP

Instead of an individual permit for point source discharges to waters of the state, DNR may issue a general permit authorizing a discharge from, among other categories, stormwater associated with a construction site if it meets certain eligibility criteria. Wis. Stat. §§ 283.31(1), 283.33(1)(am), 283.35(1). Petitioners object to DNR’s grant of coverage under the Stormwater GP

for stormwater discharges associated with the Reroute on the following bases:

OBJECTION 13: DNR should require Enbridge to apply for and obtain an individual Wisconsin Pollutant Discharge Elimination System (“WPDES”) stormwater permit because the Reroute does not comply with the terms and conditions of the Stormwater GP and therefore violates the stormwater construction permit requirement in Wis. Stat. § 283.33(1)(am).

DNR may require a point source of stormwater discharge covered by a general WPDES permit to apply for and obtain an individual WPDES stormwater permit if the stormwater discharge does not comply with a general WPDES stormwater permit. Wis. Admin. Code NR §§ 205.08(5)(b) and 216.51(5)(b). DNR’s grant of coverage to Enbridge under the Stormwater GP violates Wis. Stat. § 283.33(1)(am) because the point source stormwater discharges originating from the Reroute fail to comply with the terms and conditions of the Stormwater GP. Enbridge has therefore failed to obtain a valid permit to discharge stormwater from construction sites.

The facts supporting this objection include, but are not limited to:

- a. Any spills of fuel, oil, hydraulic, coolant, etc. resulting from fueling, equipment maintenance, or other activities that occur in waterways or wetlands (as contemplated in Conditions 106, 109, 168 in Exhibit A) are not authorized under the Stormwater GP. WPDES Permit No. WI-S067831-6 §§ 1.1.3, 2.9.7.
- b. Land disturbing construction activity and associated stormwater discharges that affect wetlands but do not comply with wetland WQS are not eligible for coverage under the Stormwater GP. WPDES Permit No. WI-S067831-6 § 1.2.2. See Objection 4, *infra*, for disputes of material facts and allegations of violations related to wetland WQS.

- c. Enbridge’s erosion and sediment control plan does not meet site-specific requirements for coverage under the Stormwater GP due to, but not limited to, the following reasons:
- i. Enbridge’s erosion and sediment control plan does not establish an adequate baseline from which to monitor and control stormwater runoff and sedimentation resulting from construction activities.
 - ii. In their erosion and sediment control plan, Enbridge failed to, among other things, define short- versus long-term timeframes for sedimentation monitoring and account for variable reactivity depending on the content of solution discharged (e.g., algae, silt, clay, woody debris).
 - iii. Without a site-specific erosion control plan with adequate baseline data, Enbridge cannot ensure that the rate or volume of dewatering discharges would not increase erosion in receiving waters. Exh. A, Condition 90; Exh. B, Condition 136.

Petitioners dispute Findings of Fact 60(d), (h), (i), 61(a), and (b) in Exhibits A and B due to the lack of specificity in Enbridge’s erosion and sediment control plan, without which DNR cannot assure compliance with Wisconsin WQS.

OBJECTION 14: Pursuant to Wis. Admin. Code NR §§ 205.08(5)(a) and 216.51(5)(a), DNR may require, and in this case should have required Enbridge to apply for and obtain an individual WPDES permit for stormwater discharges associated with land disturbing construction activity because the Reroute would be a “significant contributor” of pollution to waters of the state and is more appropriately regulated by an individual WPDES permit. “Significant contributor” is defined as dischargers who “contribute to or have the reasonable potential to contribute to an

exceedance of a water quality standard.” Wis. Admin. Code NR § 216.002(29). The Reroute has a reasonable potential to contribute to the exceedance of surface and wetland WQS enumerated in Wis. Admin. Code NR chs. 102 and 103, respectively. Given this potential for exceedance, it is unreasonable for DNR to authorize such a discharge under the Stormwater GP, and DNR should instead have required an individual WPDES permit.

Exceedances of surface WQS include but are not limited to sedimentation, turbidity, and objectionable deposits resulting from blasting of bedrock in navigable waters that would interfere with public rights in waters of the state contrary to Wis. Admin. Code NR § 102.04(1). Wetland WQS exceedances include but are not limited to significant adverse impacts to wetland functional values contrary to Wis. Admin. Code NR §§ 103.03 and 103.08. Based on the nature of the Reroute and reasonable potential for exceedance of WQS, the Reroute is more appropriately regulated by an individual WPDES stormwater permit. The facts supporting this objection include, but are not limited to:

- a. The Reroute involves construction of a 41.1-mile, 30-inch diameter crude petroleum and natural gas liquids pipeline that would cross approximately 200 navigable waterways and impact hundreds of acres of wetlands. Exhs. A and B, Findings of Fact 1, 5, 63. The length of the Reroute and acreage disturbed by its construction far surpasses the one acre of disturbance threshold for construction site stormwater discharge permits. Wis. Admin. Code NR § 216.42(1).
- b. Land disturbing construction activities for the Reroute include but are not limited to vegetation clearing, grading, trenching, blasting, conventional boring, HDD, sheet piling, dewatering, backfilling, and operation of vehicles and equipment.
- c. There is reasonable potential that these and other construction activities, especially

in conjunction with increasingly severe and frequent storm events driven by climate change, would have the following impacts to water quality: thermal increases, shifts in dissolved oxygen concentrations, nutrient loading, per- and polyfluoroalkyl substances (“PFAS”) contamination, sedimentation, changes to water flow, releases of drilling fluid, and more.

- d. As described in Objection 7, *infra*, the blasting of bedrock in navigable waters would dramatically alter the hydrogeology and substantially impact surface water quality, specifically but not exclusively sedimentation and turbidity, and would interfere with the public interest in navigable waters.
- e. The Reroute would cause further significant adverse impacts to wetland functional values, as described in Objection 4, *infra*.

Accordingly, Petitioners dispute Findings of Fact 60 and 61 in Exhibits A, and all other factual findings asserted in support of DNR’s conclusion that the Reroute would not result in significant adverse impacts to water quality.

WEPA Compliance

Before an agency undertakes any “major action[] significantly affecting the quality of the human environment,” WEPA requires the agency to prepare an EIS that evaluates, among other considerations, the environmental impacts of and alternatives to the proposal. Wis. Stat. § 1.11(2)(c). Wis. Admin. Code NR § 150.30(2) requires that “[a]n EIS shall emphasize environmental issues relevant to the evaluation of the action and provide a level of detail commensurate with the complexity of the action.” Among the contents DNR must include in an EIS are “[a] description of the purpose of the proposed project” and “[a] list of reasonable

alternatives to the proposed project, particularly those that might avoid all or some of the adverse environmental effects of the project, including a description of proposed preventive and mitigating measures and an explanation of the criteria used to discard certain alternatives from additional study.” Wis. Admin. Code NR § 150.30(2)(b) and (e). Wis. Admin. Code NR § 150.03(2) defines “[a]lternatives” as “other actions or activities which may be reasonably available to achieve the same *or altered purpose* of the proposed action or project, including the alternative of no action.” (emphasis added.) DNR must also include “[a] description of the human environment that will likely be affected by the proposed project and alternatives [,]” and “[a]n evaluation of the probable positive and negative direct, secondary and cumulative effects of the proposed project, and alternatives to the proposed project, on the human environment....” Wis. Admin. Code NR § 150.30(2)(f) and (g). If information relevant to this, or any other content required to be included in an EIS, is “incomplete or unavailable,” DNR must identify that information and include a description of its relevance. Wis. Admin. Code NR § 150.30(2)(h).

Petitioners object to DNR’s Finding of Fact 11 and Conclusion of Law 5 in Exhibit A, Finding of Fact 11 and Conclusion of Law 2 in Exhibit B, and any other finding of fact or conclusion of law which concludes DNR complied with WEPA in making the Permit Decisions on the following basis:

OBJECTION 15: In preparing the Final EIS and making its permitting decisions for the Reroute, DNR considered “the basic purpose of the [p]roject to be continuing the transport of crude oil and natural gas liquids (NGLs) *through Line 5 to Enbridge’s existing delivery locations* in approximately the same capacity as the existing line.” Exh. A, Finding of Fact 6 (emphasis added). This identified purpose is unreasonably limited to the purpose stated by Enbridge. Final EIS at 5-

6.² Because DNR limited the identified purpose of the Reroute to Enbridge’s stated purpose, DNR then found each “No-build Alternative” it identified to be inconsistent with the scope and purpose of the project. *See* Exh. A, Finding of Fact 25. In doing so, DNR failed to consider all reasonable alternatives, including altered purposes, to the proposed project, “particularly those that might avoid all or some of the adverse environmental effects of the project...” Wis. Admin. Code NR § 150.30(2)(e); *see also* Wis. Admin Code NR § 150.03(2) (defining “[a]lternatives” as “other actions or activities which may be reasonably available to achieve the same *or altered purpose* of the proposed action or project, including the alternative of no action.” (emphasis added.)) The facts supporting this objection include, but are not limited to:

- a. The U.S. Army Corps of Engineers (the “Corps”), in its Draft Combined Decision Document (“DCDD”), released on May 20, 2024, in the federal permitting process for the Reroute, defined its own purpose and need for the proposed project, separate from that provided to the Corps by Enbridge. The Corps’ defined purpose and need “is to transport crude oil and NGLs entirely outside the Bad River Reservation at approximately the same capacities provided by Enbridge’s existing Line 5 pipeline.”³ The Corps’ defined purpose and need for the Reroute is not limited to transport of oil and gas liquids through Line 5 to Enbridge’s existing delivery locations.

OBJECTION 16: DNR failed to consider at least reasonable “No-Build Alternatives,” namely hybrid alternatives that results in an increase in product transport on other, existing

² Wis. Dept. of Nat. Res., *Final Environmental Impact Statement: Proposed Enbridge Line 5 Relocation Project*, (2024), available at https://dnr.wisconsin.gov/sites/default/files/topic/EIA/Enbridge/EL5_FinalEIS.pdf.

³ U.S. Army Corps of Engineers, *Enbridge Line 5 Wisconsin Segment Relocation Project: Draft Environmental Assessment, Clean Water Act Section 404(b)(1) Guidelines Evaluation, and Public Interest Review*, (2024) at 25, available at https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Enbridge/EnbridgeLine5/DCDD/L5R%20Draft%20CD%2020240520_508_final.pdf?ver=jx4JTdDVjSuQI1-YIG7DwA%3d%3d (hereinafter “Corps DCDD”).

pipelines (including Enbridge pipelines), and a smaller increase in alternative transportation modes, particularly rail and truck. Therefore, DNR failed to consider all reasonable alternatives to the proposed project, “particularly those that might avoid all or some of the adverse environmental effects of the project....” Wis. Admin. Code NR § 150.30(2)(e). If DNR found information regarding this alternative incomplete or unavailable, it failed to identify it or provide a description of its relevance, in violation of Wis. Admin. Code NR § 150.30(2)(h). The facts supporting this objection include, but are not limited to:

- a. Petitioners made DNR aware of hybrid alternatives that would result in the increase in crude oil shipments on other, existing pipelines and a smaller increase in alternative transportation modes, particularly rail, during the Department’s comment period on its Draft EIS and before it issued the Final EIS.
- b. The Corps, in its DCDD, released on May 20, 2024, in the federal permitting process for the Reroute, considered hybrid no-action alternatives consisting of “combinations of pipeline and rail, rail and truck, and pipeline and truck to address the purpose and need” of the Reroute. Corps DCDD, *supra* note 4, at 36.
- c. A hybrid alternative is therefore a reasonable alternative that should have been considered in the Final EIS under an “altered purpose.”

STAY OF DNR’S PERMIT DECISIONS

Petitioners hereby request a stay of all discharges, activities, and projects authorized by DNR’s Permit Decisions. This Petition stays DNR’s Permit Decisions because this Petition

requests a stay and demonstrates that a stay is necessary to prevent significant adverse impacts and irreversible harm to the environment. Wis. Stat. §§ 281.36(3q)(d), 30.209(1m)(c).

A stay is necessary to prevent significant adverse impacts and irreversible harm to the environment because, if allowed to go forward, the Line 5 Reroute would cause significant adverse impacts to wetland functional values, impair waterways, and result in other, irreversible environmental harm.

DNR acknowledges that many of the wetlands that would be permanently cleared, by Enbridge's own assessments, provide high to exceptional wetland functional values. Exh. A, Finding of Fact 32. These values include wildlife habitat, floristic integrity (healthy plant communities), flood and stormwater storage, and groundwater processes. *Id.* DNR further acknowledges that “[t]here is an abundance of wetlands that are designated as wetlands in Areas of Special Natural Resource Interest in the Project area that will be impacted by construction.” Exh. A, Finding of Fact 40. DNR's permit findings understate the functional value of these wetlands, but even taking these assessments at face value, it is undisputed that significant wetland functions would be adversely impacted by the permitted discharge.

DNR considers some of these impacts to wetland functional values to be merely temporary, but this conclusion is premised on the assumption that the proposed wetland restoration efforts would be successful in restoring construction areas to pre-construction conditions. Exh. A, Finding of Fact 46. DNR acknowledges that “[i]mproper wetland restoration ... would result in long-term impacts” across all wetland functional values. *Id.* DNR itself has acknowledged that wetland restoration in high quality wetlands is “exceptionally difficult.” DNR, Final EIS at 474. Given the magnitude of construction impacts and this difficulty in wetland restoration, the Reroute presents significant risk of permanent adverse impacts to wetland floral diversity, habitat, storm and flood

prevention, water quality, shoreline protection, hydrologic function, recreational, cultural, education, scientific and natural scenic beauty values. DNR, Final EIS at 506-510. As discussed above, Petitioners have demonstrated additional reasons why the proposed restoration would not successfully return the construction areas to their pre-construction condition, an outcome in which, as DNR acknowledges, impacts to wetland functional values would not be temporary, but permanent, *i.e.*, irreversible. *See supra* Objections 2-4.

Further, even in DNR's best case scenario, in which the proposed restoration is successful on its own terms, the Department acknowledges that permanent conversion of forested to emergent wetlands along the pipeline corridor would result in permanent impacts to wildlife habitat and ecosystem hydrology and expand opportunities for invasive species to spread. Exh. A, Findings of Fact 59, 62(e). DNR also concludes that the environmental impact of the Reroute "would be a net negative[.]" Exh. A, Finding of Fact 44(e).

If allowed to go forward, the Line 5 Reroute would also cause significant adverse impacts and irreversible harm to Wisconsin's navigable waters. As discussed above, *see supra* Objection 7, blasting the bedrock in navigable waterways is irrevocable—that bedrock can never be put back together and the geological processes that formed it cannot be recreated. Altering the surface and subsurface in such a dramatic fashion not only changes the geology, but also the hydrology upon which impacted navigable waters rely to maintain baseflows, geomorphology and slope stability, water quality, fish and wildlife habitat, and more. The impacts to hydrogeology from blasting at candidate sites have not been adequately established, and those impacts to hydrogeology that have been identified can only be minimized, not prevented or remediated, and not to the extent that these irreversible impacts would be insignificant. These significant impacts would in turn impair

the qualified riparian rights of abutting and adjacent riparian owners as well as the predominant rights of the public to the fullest use of navigable waters.

A stay is further necessary here to avoid irreversible impacts from construction and operation events including oil spills or leaks, aquifer breaches, or discharges of drilling mud during HDD. The sheer scale of the Reroute and the number of wetlands and waterways to be crossed, dredged, blasted with explosives, and otherwise disturbed by construction makes it exceedingly unlikely that the Reroute would be constructed without significant impacts to the environment, even beyond those acknowledged by DNR in the Permit.

The reason the Legislature provided that a petition for contested case hearing stays the discharge, activity, or project pending an administrative hearing is precisely because it is the nature of discharges to wetlands and activities or projects affecting navigable waters that makes the resulting environmental impacts difficult if not impossible to reverse. That is the exact situation here.

Petitioners have demonstrated that a stay is necessary to prevent significant adverse impacts and irreversible harm to the environment, and thus this Petition stays the discharge, activity, and projects authorized by DNR's Permit Decisions.

CONCLUSION

WHEREFORE, Petitioners request that, pursuant to Wis. Stat. §§ 281.36(3q)(f), 30.209(1m), and 227.42, and Wis. Admin. Code NR § 299.05(5)-(7), DNR grant this Petition for an administrative hearing because it satisfies requisite statutory provisions in Wis. Stat. §§ 281.36(3q)(c), 30.209(1m)(b), and 227.42(1), and Wis. Admin. Code NR § 299.05(5). Further, pursuant to Wis. Stat. §§ 281.36(3q)(d) and 30.209(1m)(c)-(d), this Petition stays construction of

the Line 5 Reroute because this Petition requests a stay and shows that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Respectfully submitted this 12th day of December, 2024.



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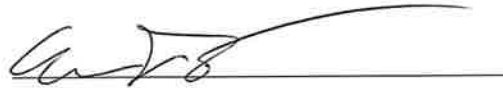
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