

WISCONSIN

Bad River Band offers Enbridge a new idea to fix erosion near Line 5 oil pipeline



Caitlin Looby

Milwaukee Journal Sentinel

Published 5:03 a.m. CT July 11, 2024 | Updated 1:10 p.m. CT July 12, 2024

The Bad River Band of Lake Superior Chippewa has proposed a new project to mitigate the immediate risks of erosion along the Line 5 oil pipeline, a move that comes amid fraught conflict between the Band and the Canadian oil giant Enbridge.

On July 5, Bad River Band Chairman Robert Blanchard sent a letter to Enbridge that proposed a new project to mitigate erosion that has pushed the Bad River within feet of the Line 5 pipeline. In the letter, obtained by the Journal Sentinel, Blanchard states that the Bad River Band “invites Enbridge’s cooperation.”

The Band believes that as more time passes, its land and way of life become more jeopardized.

The Mashkiiziibii – or Bad River – flows through the Band’s land before it empties into Lake Superior roughly 10 miles east of Ashland. Flooding and erosion along the river has moved one bank, known as the meander, as close as 11 feet to the pipeline in one location. In 2019, when the Band first filed a lawsuit against the Canadian oil giant, the bank stood more than 300 feet away.

In the letter, Chairman Blanchard explained that while the Band believes that Enbridge should end its trespass and leave the watershed, the project will help “protect the pristine nature of Mashkiiziibii and her wetlands for so long as Enbridge perpetuates its trespass.”

Enbridge proposed a solution late last year, but it did not get approved.

Blanchard told the Journal Sentinel that the previous proposals Enbridge put forth to reduce risks at the meander did not comply with environmental laws and infringed on the Band's treaty rights, as well as the functioning of the Bad River floodplain during high water.

The Band's proposed project minimizes environmental and cultural impacts, while requiring shorter installation time with fewer construction risks, according to the letter. The Band's natural resources department worked with Wright Water Engineers, an environmental and civil engineering firm based in Denver.

The Band is proposing to use log jacks, and interlocking and removable tree trunks, which will be made off-site and transported to an area near the meander. The project avoids using heavy machinery in the river or on the bank, and doesn't require constructing new roads or bridges. The new solution also will require 90 percent fewer helicopter flights than Enbridge's most recent proposal, according to the letter.

The logs also will be completely removable so the river can continue its natural movement after the project is complete, which is essential to the Band, Blanchard said.

Blanchard has asked that the Band's department of natural resources, the consulting firm and Enbridge work together to finalize the details. The parties met for the first time on July 10 to begin discussing the project.

Enbridge spokesperson Juli Kellner said that the company recently learned about the project's concept. "Over the weekend we received a few more details, and appreciate the Band's invitation to learn more, and work cooperatively to control erosion at the meander," she said.

Blanchard suggested the Band shouldn't be in this position at all.

"Responsible companies, including other oil companies, respect tribal rights without waiting for a court order. Enbridge could completely eliminate the risk by doing the same here," Blanchard told the Journal Sentinel. "But until it does, or until the courts require it to respect our legal rights, we have no choice but to explore every responsible avenue to safeguard our sacred land and waters."

More: Great Lakes tribes teach 'water is life.' But they're forced to fight for a voice in safeguarding it.

Bad River Band, Enbridge await appeals court decision

The Chairman's letter comes against the backdrop of ongoing litigation between the Bad River Band and the fossil fuel company.

The Band filed a lawsuit against Enbridge in 2019, asking the company to remove the Line 5 pipeline, which has been operating on 12 miles of its land with an expired easement. Tribal officials chose not to renew the easement in 2017 in fear of environmental damage.

In June 2023, a federal judge ordered that Enbridge must remove the pipeline from the tribe's land within three years or face a shutdown. Both sides appealed the decision last year, and the 7th U.S. Circuit Court of Appeals heard oral arguments in February.

The latest development occurred in April when the Biden administration issued a long-awaited stance on the pipeline.

The amicus brief was a mixed bag of positions. For instance, the Department of Justice stated that Enbridge is liable for trespassing on the Band's land, but the department also failed to take a position on the transit treaty that prevents the disruption of the flow of oil between the U.S. and Canada.

Ultimately the Band and the Canadian oil company are still waiting for a decision from the appellate court.

More: 'A new chapter of a very old story': Documentary shows Bad River Band's fight against Line 5

Enbridge offered settlement, Bad River Band said its treaty rights are not for sale

This is not the first public correspondence that the Band and the oil giant have had this year.

In March, Enbridge published a letter on its site to the Band offering \$80 million to settle past disputes, and state its commitment to work with the Band to find solutions. In

response, Chairman Blanchard said the Band's homeland, treaty rights and way of life are not for sale.

Tribes and environmental groups around the region have long said that the pipeline is one of the greatest threats to the Great Lakes and infringes on tribal sovereignty and treaty rights. Line 5 has leaked 35 times in its roughly 70-year tenure and released a total of more than 1.13 million gallons of oil into the environment, according to the Pipeline and Hazardous Materials Safety Administration database.

Enbridge contends that thousands of jobs and billions in economic output will be lost if Line 5 is shut down. The company also says oil prices would rise and refineries would be put at risk.

Meanwhile Enbridge is working to reroute the Line 5 pipeline around the Bad River Band's land. The reroute project, which was proposed four years ago, is not permitted by any agency.

More: Visiting Madeline Island this summer? A new exhibit highlights Ojibwe journey to Great Lakes

Caitlin Looby is a Report for America corps member who writes about the environment and the Great Lakes. Reach her at clooby@gannett.com or follow her on X @caitlooby.

Please consider supporting journalism that informs our democracy with a tax-deductible gift to this reporting effort at jsonline.com/RFA or by check made out to The GroundTruth Project with subject line Report for America Milwaukee Journal Sentinel Campaign. Address: The GroundTruth Project, Lockbox Services, 9450 SW Gemini Dr, PMB 46837, Beaverton, Oregon 97008-7105.