

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

STATE OF MICHIGAN,

MATCH-E-BE-NASH-SHE-WISH BAND OF
THE POTTAWATOMI INDIANS,

and

NOTTAWASEPPI HURON BAND OF THE
POTAWATOMI,

Plaintiffs,

v.

ENBRIDGE ENERGY,
LIMITED PARTNERSHIP,
ENBRIDGE PIPELINES (LAKEHEAD) L.L.C.,
ENBRIDGE ENERGY PARTNERS, L.P.,
ENBRIDGE ENERGY MANAGEMENT, L.L.C.,
ENBRIDGE ENERGY COMPANY, INC.
ENBRIDGE EMPLOYEE SERVICES, INC.,
ENBRIDGE OPERATIONAL SERVICES, INC.,

and

ENBRIDGE PIPELINES INC.,

Defendants.

Civil Action No. 1:15-cv-590

Judge Gordon J. Quist

CONSENT DECREE FOR
NATURAL RESOURCE
DAMAGES

TABLE OF CONTENTS

I.	JURISDICTION	5
II.	PARTIES BOUND	5
III.	DEFINITIONS	6
IV.	GENERAL PROVISIONS	12
V.	ACTIVITIES BY DEFENDANTS TO RESTORE, REHABILITATE, OR REPLACE INJURED NATURAL RESOURCES AND LOST NATURAL RESOURCE SERVICES	13
VI.	PAYMENTS BY DEFENDANTS	15
VII.	STIPULATED PENALTIES	18
VIII.	REIMBURSEMENT OF AMOUNTS RECEIVED FROM OSLTF	22
IX.	RESTORATION ACCOUNT	22
X.	COVENANT NOT TO SUE BY PLAINTIFFS	23
XI.	RESERVATION OF RIGHTS BY PLAINTIFFS	25
XII.	COVENANT NOT TO SUE AND WAIVER OF CLAIMS BY DEFENDANTS	27
XIII.	EFFECT OF SETTLEMENT	28
XIV.	NOTICES	28
XV.	APPENDICES	30
XVI.	RETENTION OF JURISDICTION	31
XVII.	MODIFICATION	31
XVIII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	31
XIX.	SIGNATORIES AND SERVICE	32
XX.	FINAL JUDGMENT	33

A. WHEREAS, Plaintiffs, United States of America (“United States”), the State of Michigan (“State”), the Nottawaseppi Huron Band of the Potawatomi, and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians (the latter two collectively referred to herein as the “Tribes”) have filed a complaint in this action, asserting claims under Section 1002(a) of the Oil Pollution Act, as amended (“OPA”), 33 U.S.C. § 2702(a), and under Sections 3115(2) and 20126a of the Michigan Natural Resources and Environmental Protection Act (“NREPA”), MCL 324.3115(2) and MCL 324.20126a, against Defendants Enbridge Energy, Limited Partnership (“EELP”), Enbridge Pipelines (“Lakehead”) L.L.C. (“EP-Lakehead”), Enbridge Energy Partners, L.P. (“EEP”), Enbridge Energy Management, L.L.C. (“EEM”), Enbridge Energy Company, Inc. (“EECI”), Enbridge Employee Services, Inc. (“EESI”), Enbridge Operational Services, Inc. (“EOSI”), and Enbridge Pipelines Inc. (“EPI”) (hereinafter “Defendants” or “Enbridge”). The complaint alleges that (i) Defendants’ Lakehead System Line 6B pipeline discharged more than 20,000 barrels of oil, including discharges into Talmadge Creek, into the Kalamazoo River, and into or upon adjoining shorelines of these surface waters on July 25 and July 26, 2010 (the “Discharges”), (ii) the Discharges resulted in injuries to, destruction of, loss of, or loss of use of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the State, and the Tribes, including injuries resulting from removal actions required to clean up the discharged oil, (iii) the United States Department of the Interior (“DOI”), through the United States Fish and Wildlife Service (“USFWS”) and the Bureau of Indian Affairs (“BIA”), the United States Department of Commerce, through the National Oceanic and Atmospheric Administration (“NOAA”) (collectively referred to herein as the “Federal Trustees”), the Nottawaseppi Huron Band of the Potawatomi, and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians (collectively referred to herein as the “Tribal

Trustees”), have incurred unreimbursed Natural Resource Damage Assessment costs as a result of the Discharges, and (iv) Defendants are liable without limitation for natural resource damages for such injuries, destruction and losses, including reasonable Natural Resource Damage Assessment costs, under OPA and applicable provisions of State law.

B. WHEREAS, the State of Michigan, through the Michigan Attorney General and at the request of and on behalf of the Michigan Department of Environmental Quality (“MDEQ”) and the Michigan Department of Natural Resources (“MDNR”), has also filed a complaint in Calhoun County Circuit Court, asserting that the release of oil from Line 6B on July 25 and July 26, 2010 subjects Defendants to liability under specified State regulatory and enforcement authorities, including Parts 17, 31, 301, 303, and 201 of the NREPA, MCL 324.1701 *et seq.*, 324.3101 *et seq.*, 324.30101 *et seq.*, 324.30301 *et seq.*, and 324.20101 *et seq.* (hereinafter “State Regulatory Action”).

C. WHEREAS, concurrently with the filing of the complaint in the State Regulatory Action, the parties to that action filed a separate consent judgment (“State Consent Judgment”) that requires Defendants to implement certain response activities to address conditions resulting from the release of oil from Line 6B on July 25 and July 26, 2010, to comply with certain permitting requirements, to implement certain wetland mitigation projects, inland waterway mitigation projects, and restoration and monitoring requirements. Upon approval by the Calhoun County Circuit Court, the State Consent Judgment will resolve the Michigan state law claims specified in the State Regulatory Action, subject to the Reservations of Rights by the State set forth in Section XXIV of the State Court Judgment.

D. WHEREAS, the Parties to this Consent Decree agree that compliance with various mitigation, restoration and monitoring requirements established in the State Consent

Judgment will contribute toward restoration, rehabilitation, replacement of natural resources injured as a result of the Discharges, or to acquisition of equivalent resources. As a result, the Parties have agreed that specified requirements of the State Consent Judgment shall be incorporated as requirements of this Consent Decree, and that the settlement in this Consent Decree shall be conditioned upon approval and entry of the State Consent Judgment. A copy of the proposed State Consent Judgment is attached to and incorporated by reference in this Consent Decree.

E. WHEREAS, the Federal Trustees, State Trustees, and Tribal Trustees share trusteeship of various Natural Resources allegedly injured as a result of the Discharges, and previously entered into a Memorandum of Understanding providing a framework for coordinating assessment and restoration efforts.

F. WHEREAS, nothing in this Consent Decree shall constitute an admission by Defendants that Trustees referred to in the preceding clause are eligible under the Oil Pollution Act to act as trustees to assess and recover natural resource damages resulting from the Discharges.

G. WHEREAS, Defendants have previously reimbursed approximately \$ 970,687 of Natural Resource Damage Assessment Costs incurred by Federal and State Trustees, including DOI costs incurred through May 31, 2011, USFWS costs through March 31, 2011, BIA costs through May 21, 2011, NOAA costs through February 26, 2011, and State costs through June of 2013.

H. WHEREAS, Defendants previously implemented five projects that provide enhanced recreational opportunities along the Kalamazoo River, including a project at Saylor's Landing that included facilities providing increased opportunities for recreational boating;

improved facilities for portage and river access around the former Ceresco Dam, which has now been removed; improvements to Historic Bridge Park, including improved accessibility to dock facilities along the river; new shore-based fishing and canoe access at Angler's Bend; and a new park and river access site at Paddler's Grove. In addition, Defendants have previously established an endowment, to be managed by an independent entity, to provide for long-term maintenance of the five projects.

I. WHEREAS, the Federal Trustees, State Trustees and Tribal Trustees have issued for public comment a Draft Damage Assessment and Restoration Plan/Environmental Assessment for the Enbridge Line 6B Oil Discharges near Marshall, Michigan, as provided for under Title 15 C.F.R. § 990.55, and have invited public comment on the draft Plan.

J. WHEREAS, by entering into this Consent Decree, Defendants do not admit the allegations in the complaints filed in this action or in the State Regulatory Action.

K. WHEREAS, the Parties agree that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving this action.

L. WHEREAS, the Parties agree, and by entering this Consent Decree the Court finds, that this Consent Decree: (1) has been negotiated by the Parties at arm's length, in good faith, (2) will limit, avoid and resolve prolonged litigation among the Parties; and (3) is fair, reasonable, and furthers the objectives of OPA.

M. WHEREAS, the Defendants do not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE, without adjudication of any issue of fact or law, except as provided in Section I (Jurisdiction) below, and with the consent of the Parties,

IT IS ADJUDGED, ORDERED AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1331 and 1345, and over the Parties to this action for the purpose of entry and enforcement of this Consent Decree. This Court has pendent jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a). Venue lies in the Western District of Michigan pursuant to 33 U.S.C. § 2717(b) and 28 U.S.C. § 1391. Solely for the purposes of this Consent Decree or any action to enforce the Consent Decree, the Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. For the purposes of this Consent Decree, Defendants admit that the complaint in this action states claims against Defendants for which relief may be granted under OPA and state law.

II. PARTIES BOUND

2. The obligations of this Consent Decree apply to and are binding upon the Parties and each of their successors, assigns, or other entities or persons otherwise bound by law to comply with this Consent Decree. Any change in ownership or corporate status of the Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendants' or their successors' and assigns' rights or responsibilities under this Consent Decree. In any action to enforce this Consent Decree, the Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree;

nor shall Defendants contest the right of any of the Trustees to enforce the provisions of this Consent Decree.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA or in the regulations promulgated by NOAA under OPA, 15 C.F.R. Part 990, shall have the meaning assigned to them in OPA or in such regulations, as applicable. Whenever the following terms are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the definition specified hereinafter shall apply.

a. “BIA” shall mean the Bureau of Indian Affairs, an agency of the United States Department of the Interior.

b. “Consent Decree” shall mean this Consent Decree and appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. “DARRF” shall mean NOAA’s Damage Assessment and Restoration Revolving Fund.

d. “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

e. “Defendants” or “Enbridge” shall mean Enbridge Energy, Limited Partnership (“EELP”), Enbridge Pipelines (“Lakehead”) L.L.C. (“EP-Lakehead”), Enbridge Energy Partners, L.P. (“EEP”), Enbridge Energy Management, L.L.C. (“EEM”), Enbridge

Energy Company, Inc. (“EECI”), Enbridge Employee Services, Inc. (“EESI”), Enbridge Operational Services, Inc. (“EOSI”), and Enbridge Pipelines Inc. (“EPI”).

f. “Discharges” shall mean the discharges of oil to the environment from Defendants’ Lakehead System Line 6B oil transmission pipeline on July 25 and July 26, 2010.

g. “DOI” shall mean the United States Department of the Interior.

h. “Federal Trustees” shall mean the federal officials designated by the President under OPA § 1006(b)(2), 33 U.S.C. § 2706(b)(2), to act as trustees on behalf of the public for natural resources that have been injured as a result of the Discharges, including the Secretary of the Interior, acting through the USFWS and the BIA, and the Secretary of Commerce, acting through NOAA.

i. “Final work plan” shall mean a work plan or other deliverable that is (1) submitted for approval to MDEQ in connection with any activities referred to in Paragraph 7 of this Consent Decree, and (2) approved by MDEQ; provided however, that if Enbridge contests the approval of any such work plan or other deliverable in accordance with the dispute resolution provisions of the State Consent Judgment, the disputed portions of the work plan or other deliverable shall only be a “final work plan” for purposes of this Consent Decree upon final resolution of the dispute, including all timely appeals.

j. “Future Costs” shall mean costs incurred by the Federal and Tribal Trustees in connection with (i) restoration planning activities, including development and adoption of the Restoration Plan, (ii) oversight of restoration projects and monitoring implemented pursuant to Section V (Activities By Defendants To Restore, Rehabilitate, or Replace Injured Natural Resources and Lost Natural Resource Services) of this Consent Decree, (iii) oversight of restoration projects undertaken by one or more Trustees with funds provided

under Paragraph 10, below; and (iv) consultation with the State in connection with State review and approval of work plans or other submittals for any projects or monitoring pursuant to Section V (Activities By Defendants To Restore, Rehabilitate, or Replace Injured Natural Resources and Lost Natural Resource Services) of this Consent Decree, or for modification of projects required under Section V (Activities By Defendants To Restore, Rehabilitate, or Replace Injured Natural Resources and Lost Natural Resource Services) of this Consent Decree. Future Costs also includes costs of any Natural Resource Damage Assessment activities that were incurred by any Federal or Tribal Trustee subsequent to the respective cutoff date for Past Natural Resource Damage Assessment Costs for such Trustee.

k. “Interest,” as that term is used in Sections VI (Payments by Defendants) and VII (Stipulated Penalties) of this Consent Decree, shall mean interest earned at the rate and by the method specified in 28 U.S.C. § 1961(a) and (b).

l. “Lead Administrative Trustee” shall mean Lisa Williams, USFWS, or, following written notification by Trustees to Enbridge, any other representative that the Trustees designated to serve as Lead Administrative Trustee.

m. “MDNR” shall mean the Michigan Department of Natural Resources.

n. “MDEQ” shall mean the Michigan Department of Environmental Quality.

o. “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the State or the Tribes.

p. “Natural Resource Damages” shall mean any damages recoverable by the United States, the State, or the Tribes, as Trustees or *parens patriae* on behalf of the public, under Section 1002(b)(2)(A) of OPA, or State Natural Resource Damage Law, as compensation

for injury to, destruction of, loss of, or loss of use of Natural Resources and natural resource services they provide, resulting from a release or threat of release of oil linked to the Discharges (including any injury, destruction or losses to Natural Resources from removal actions to address the Discharges). Natural Resource Damages include, without limitation: (i) Natural Resource Damage Assessment Costs; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources and natural resources services, or of acquisition of equivalent resources; (iii) the costs of planning and monitoring such restoration activities; and (iv) any other compensation for diminution in value or loss of use or non-use values resulting from the Discharges.

q. “Natural Resource Damage Assessment Costs” shall mean, for purposes of this Consent Decree, all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), incurred by the Trustees on or before entry of this Consent Decree, including, but not limited to, direct, indirect, and administrative costs in assessing the alleged injury to, destruction of, loss of, or loss of use of Natural Resources resulting from the Discharges, and all costs directly or indirectly related to negotiating this Consent Decree.

r. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

s. “NOAA” shall mean the National Oceanic and Atmospheric Administration.

t. “OPA” shall mean the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701-2761.

- u. “OSLTF” shall mean the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509.
- v. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.
- w. “Parties” shall mean the Plaintiffs and the Defendants.
- x. “Past Natural Resource Damage Assessment Costs” shall mean, for purposes of this Consent Decree, the following Natural Resource Damage Assessment Costs:
 - i. costs incurred and paid by the DOI Solicitor’s Office prior to June 30, 2013;
 - ii. costs incurred and paid by USFWS prior to March 31, 2013;
 - iii. costs incurred and paid by BIA prior to September 30, 2012;
 - iv. costs incurred by NOAA prior to May 17, 2013;
 - v. costs incurred by the Nottawaseppi Huron Band of the Potawatomi prior to December 7, 2013; and
 - vi. costs incurred by the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians prior to December 7, 2013
- y. “Plaintiffs” shall mean the United States, the State of Michigan, and the Tribes.
- z. “Restoration Account” shall mean a separate account that DOI has established within the NRDAR Fund, identified as account No. 0619, “Enbridge Marshall, MI Pipeline Discharges.” Expenditures from this Restoration Account shall be subject to approval of the Trustees.

aa. “Restoration Plan” shall mean the “Damage Assessment and Restoration Plan/Environmental Assessment for the July 25-26, 2010 Enbridge Line 6B Oil Discharges Near Marshall, MI” developed by the Trustees for the restoration of the Kalamazoo River, Talmadge Creek, and adjoining shorelines in accordance with OPA and its underlying regulations at 15 C.F.R. §§ 990.53 - 990.56, and any future revisions thereof.

bb. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

cc. “State” shall mean the State of Michigan, including MDNR, MDEQ, and the Michigan Attorney General.

dd. “State Consent Judgment” shall mean a settlement, in substantially the same form as the proposed State Consent Judgment attached hereto as Appendix A, approved by the Calhoun County Circuit Court in the case captioned *State of Michigan v. Enbridge Energy Partners, LP, et al.*

ee. “State Natural Resource Damage Law” shall mean, for purposes of this Consent Decree, the authorities granted to the State to assess and recover damages for injury to, destruction of, or loss of natural resources, including costs of assessment, set forth at Sections 3115(2) and 20126a of the NREPA, MCL 324.3115(2) and 324.20126a.

ff. “Subparagraph” means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

gg. “Tribes” shall mean the Nottawaseppi Huron Band of the Potawatomi and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians (also known as the Gun Lake Tribe).

hh. “Trustees” shall mean the designated Federal Trustees, the Michigan Attorney General, the MDNR, and MDEQ; and the Nottawaseppi Huron Band of the Potawatomi and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians.

ii. “United States” shall mean the United States of America, on behalf of the DOI, including USFWS and BIA, and NOAA, including all agencies, bureaus, administrations or departments of DOI, USFWS, BIA, and NOAA.

jj. “USFWS” shall mean the United States Fish and Wildlife Service.

IV. GENERAL PROVISIONS

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide for restoration, rehabilitation, replacement, or acquisition of the equivalent of the Natural Resources allegedly injured, destroyed, or lost as a result of the Discharges and subsequent removal actions to address the Discharges, including restoration, rehabilitation or replacement of lost natural resource services; (ii) to provide for payment of unreimbursed Natural Resource Damage Assessment Costs incurred by Trustees; (iii) to resolve the Defendants’ liability for alleged Natural Resource Damages as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

5. Nothing in this Consent Decree shall be construed to establish a natural resource damage claim payable from the OSLTF. The Director of the National Pollution Funds Center retains full authority to adjudicate any claim against the OSLTF and to determine whether to pay or deny any such claim in accordance with OPA and its implementing regulations.

6. The Effective Date of this Consent Decree shall be the date on which the Consent Decree is entered by the Court, or the date the State Consent Judgment is entered by the Calhoun County Circuit Court in the State Regulatory Action, whichever is later. In the event

that the Calhoun County Circuit Court denies entry of the State Consent Judgment, this Consent Decree shall be null and void.

V. ACTIVITIES BY DEFENDANTS TO RESTORE, REHABILITATE, OR REPLACE INJURED NATURAL RESOURCES AND LOST NATURAL RESOURCE SERVICES

7. Defendants shall implement all of the projects and requirements of Sections VIII, IX, and XIX of the State Consent Judgment in accordance with applicable schedules and final work plans established or approved under the State Consent Judgment, provided, however, that the following requirements within Sections IX and XIX of the State Consent Judgment are not incorporated herein or enforceable under the terms of this Consent Decree: Paragraph 9.1 (Remedial Investigation of In-Channel and Wetland Impacts Affecting Aquatic Life), and Paragraph 19.5 (funding for additional mitigation projects to be undertaken by the State). The projects and requirements that Defendants shall implement under this Paragraph 7 include, without limitation: (i) wetland restoration and monitoring described in Paragraphs 8.1 and 8.2 of the State Consent Judgment; (ii) Talmadge Creek channel habitat evaluation, restoration and monitoring requirements described in Paragraphs 9.2 and 9.3 of the State Consent Judgment; (iii) an aquatic vegetation survey and implementation of any measures that may be required pursuant to Paragraph 9.4 of the State Consent Judgment; (iv) monitoring of Kalamazoo River bank erosion and implementation and maintenance of any erosion-related corrective actions established pursuant to Paragraph 9.5 of the State Consent Judgment; (v) completion of the Large Woody Debris Supplemental Assessment Work Plan, the Large Woody Debris Replacement Work Plan, and the completion of activities required under Paragraph 9.6 of the State Consent Judgment; (vi) funding of additional fish contaminant monitoring as described in Paragraph 9.7 of the State Consent Judgment; (vii) implementation

of a Corrective Action Plan in accordance with Paragraph 9.8 of the State Consent Judgment, if the Michigan Department of Community Health issues a fish consumption advisory associated with the Discharges; (viii) funding of additional monitoring in 2015 to evaluate Fish Status and Trends and benthic macroinvertebrate health, in accordance with Paragraph 9.9 of the State Consent Judgment; (ix) development and implementation of Corrective Action Plans in accordance with Paragraph 9.10 of the State Consent Judgment if MDEQ or MDNR determines that monitoring of Fish Status and Trends and benthic macroinvertebrate health indicates one or more adverse outcomes attributable to the Discharges and/or actions taken in response to the Discharges; (x) the Ceresco Dam Removal and Kalamazoo River monitoring and restoration project described in Paragraph 19.1 of the State Consent Judgment; (xi) the wetlands compensation projects required under Paragraph 19.2 of the State Consent Judgment, including, if any, additional wetland compensation projects required under Paragraph 11.2(d) of the State Consent Judgment; (xii) projects to restore lost human uses of natural resources, as described at Paragraph 19.3 of the State Consent Judgment; and (xiii) in accordance with Paragraph 19.4 of the State Consent Judgment, the establishment and maintenance of an irrevocable endowment to be managed by a private consulting firm for the perpetual maintenance of projects to restore lost human uses of natural resources, as described in Paragraph 19.3 of the State Consent Judgment.

8. Defendants shall ensure that any conservation easements or other permanent protections as required under Part 303, Wetland Protection, of Michigan's NREPA (MCL 324.30301 *et seq.*), relating to any of the restoration or mitigation projects referred to in the preceding Paragraph include the Federal and Tribal Trustees as third party beneficiaries, with rights to enforce the restrictions of such conservation easements or other permanent protections.

9. If any work plans or other submittals relating to work described in Paragraph 7 are submitted to MDEQ or MDNR for approval, including any Plans for Additional Compensation proposed under Paragraph 11.2(d) of the State Consent Judgment, Defendants shall simultaneously submit an electronic copy of such work plans or submittals to the Lead Administrative Trustee. MDEQ or MDNR as applicable will consult with Federal and Tribal Trustees prior to taking action on such plans or submittals.

a. Prior to acting on any proposed modification of any work plan or other submittal relating to work described in Paragraph 7, above, and prior to agreeing to any modification of such a work plan or other submittal in connection with an assertion of Force Majeure under Section XIV of the State Consent Judgment or in connection with a Dispute Resolution proceeding under Section XXI of the State Consent Judgment, MDEQ or MDNR as applicable will provide an electronic copy of the proposed modification to the Lead Administrative Trustee, and Federal and Tribal Trustees shall be given an opportunity to consult with MDEQ or MDNR as applicable prior to action on any such proposed modification.

b. If any work plan or other submittal relating to work described in Paragraph 7, above, is modified pursuant to judicial resolution of a dispute under Section XXI of the State Consent Judgment, Enbridge shall promptly provide the Lead Administrative Trustee with a copy of the final decision resolving the dispute and a copy of any such modified work plan or submittal.

VI. PAYMENTS BY DEFENDANTS

10. Payments to Fund Additional Restoration Projects and Future Costs. Within thirty (30) days of the Effective Date of the Consent Decree, Defendants shall pay \$2,265,048, plus Interest accruing from the date of lodging of the Consent Decree through the date of

payment, to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-10099/1. This payment shall be deposited in the Restoration Account for the joint use and benefit of the Federal, State, and Tribal Trustees. Of the amount paid pursuant to this Paragraph:

a. Up to \$441,874, plus Interest on that amount, accruing from the date of lodging of the Consent Decree through the date of payment, shall be available for, and applied as needed to fund, Future Costs of Federal Trustees;

b. Up to \$120,000, plus Interest on that amount, accruing from the date of lodging of the Consent Decree through the date of payment, shall be available for, and applied as needed to fund, Future Costs of Tribal Trustees; and

c. \$1,703,174, plus Interest on that amount, accruing from the date of lodging of the Consent Decree through the date of payment, shall be available for and used to fund projects consistent with the Restoration Plan to restore, rehabilitate, replace, or acquire the equivalent of Natural Resources affected by the Discharges.

If Trustees subsequently determine that any amounts paid under Subparagraphs 10.a or 10.b are not needed for Future Costs, such amounts shall be available to fund projects consistent with the Restoration Plan to restore, rehabilitate, replace, or acquire the equivalent of Natural Resources affected by the Discharges.

11. Reimbursement of Past Natural Resources Damage Assessment Costs of Federal Trustees. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants shall pay \$1,484, 952, plus Interest accruing from the date of lodging of the Consent Decree through the date of payment, to the United States by FedWire Electronic Funds Transfer

(“EFT”) to the U.S. Department of Justice account, in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-10099/1. This amount includes \$1,134,952 for Past Assessment costs incurred by U.S. FWS, BIA, or other components of DOI, and \$350,000 for Past Assessment costs incurred by NOAA.

12. Payments to the United States pursuant to Paragraphs 10 and 11 shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Western District of Michigan following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business date.

13. A copy of the paperwork documenting EFT payments and any accompanying correspondence shall be sent by the Defendants to the persons listed in Section XIV (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
Mail Stop 3548
1849 C Street, N.W.
Washington, D.C. 20240

NOAA NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, Maryland 20910-3281

Notices shall reference the DOJ Case Number (#90-5-1-1-10099/1), and indicate that the payment relates to the “Enbridge Marshall, MI Pipeline Discharges,” and include the name(s) of the paying responsible party.

14. Reimbursement of Past Natural Resources Damage Assessment Costs of Tribal Trustees. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants shall

pay a total of \$150,000, plus Interest accruing from the date of lodging of the Consent Decree through the date of payment, to the Tribal Trustees as follows:

a. Defendants shall pay \$75,000, plus Interest on that amount, accruing from the date of lodging of the Consent Decree through the date of payment, to the Nottawaseppi Huron Band of the Potawatomi in reimbursement for Natural Resource Damage Assessment Costs incurred by the Nottawaseppi Huron Band of the Potawatomi. Payment shall be made by certified check to the Nottawaseppi Huron Band of the Potawatomi and sent to William Brooks, Chief Legal Officer, Nottawaseppi Huron Band of the Potawatomi, 1484 Mno-Bmadzewen Way, Fulton, MI 49502 by certified mail return receipt requested.

b. Defendants shall pay \$75,000, plus Interest on that amount, accruing from the date of lodging of the Consent Decree through the date of payment, to the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians in reimbursement for Natural Resource Damage Assessment Costs incurred, by the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians. Payment shall be made by certified check made out to the Gun Lake Tribe and sent to Environmental Department c/o Todd Williamson, 1743 142nd Ave., Dorr, MI 49323, by certified mail, return receipt requested.

15. The Defendants are jointly and severally liable for all payments required under this Consent Decree.

VII. STIPULATED PENALTIES

16. Assessment of Stipulated Penalties. For each failure to make any payment required under Paragraphs 10, 11, and 14 when due, Defendants shall pay a stipulated penalty as provided below in this Section VII. The Defendants shall be jointly and severally liable for payment of such stipulated penalties.

17. Stipulated penalties shall accrue at a rate of three thousand dollars (\$3,000) per day for each of the first thirty (30) days that a payment is late, and at the rate of six thousand dollars (\$6,000) per day for each additional day that a payment is late. Stipulated penalties shall begin to accrue on the day after a required payment is due, and such penalties shall continue to accrue until the date on which the required payment is received. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

a. In the case of late payments due under Paragraph 10, above, one-third of the accrued stipulated penalties, together with any Interest thereon under Paragraph 20 shall be paid to the United States in the manner specified in Paragraph 21.a, one-third of the accrued penalties, together with any Interest thereon under Paragraph 20, shall be paid to the State in the manner specified in Paragraph 21.b and one-sixth of the accrued penalties, together with any Interest thereon under Paragraph 20, shall be paid to each of the Tribes, in the manner specified in Paragraphs 21.c and 21.d.

b. In the case of late payments due under Paragraph 11, above, all accrued stipulated penalties, together with any Interest thereon under Paragraph 20, shall be paid to the United States in the manner specified in Paragraph 21.a.

c. In the case of late payments due under Paragraph 14.a, above, all accrued stipulated penalties, together with any Interest thereon under Paragraph 20, shall be paid to the Nottawaseppi Huron Band of the Potawatomi, in the manner specified in Paragraph 21.c.

d. In the case of late payments due under Paragraph 14.b, above, all accrued stipulated penalties, together with any Interest thereon under Paragraph 20, shall be paid to the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, in the manner specified in Paragraph 21.d.

18. Notice and Demand. In the event of a failure to make a timely payment required under Paragraph 10, above, any Federal, State or Tribal Trustee may provide Defendants with a written notice of noncompliance and a demand for payment of stipulated penalties, in the manner specified in Section XIV of this Consent Decree (Notices). In the case of any failure to make a timely payment required under Paragraphs 11 or 14, the Party entitled to receive the payment may provide Defendants with a written notice of noncompliance and a demand for stipulated penalties, in the manner specified in Section XIV of this Consent Decree (Notices). However, stipulated penalties for any violation of Paragraphs 10, 11, or 14, above, shall accrue as provided in Paragraph 17, above, regardless of whether the Defendants have been notified of a violation.

19. Defendants shall pay stipulated penalties as provided below in this Section VII within thirty (30) days of receipt of written demand for such stipulated penalties.

20. Interest. If the Defendants fail to pay any stipulated penalties when due, Defendants shall pay Interest on the unpaid balance of any stipulated penalties due, which shall begin to accrue on the date thirty (30) days past the demand therefor. Defendants are jointly and severally liable for any stipulated penalties and any such Interest payments.

21. Payment Instructions. All stipulated penalty and Interest payments due under this Section VII shall be accompanied by a reference to this Consent Decree, be identified as "Stipulated Penalties," and reference "Enbridge Marshall, MI Pipeline Discharges." Notice of payment of a stipulated penalty shall be made to the appropriate Trustees in the manner specified in Section XIV (Notices).

a. Defendants shall pay any stipulated penalties and Interest due to the United States pursuant to this Section VII by FedWire Electronic Funds Transfer ("EFT") to the

U.S. Department of Justice in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Michigan. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree, and shall reference the case name, civil action number, DOJ Case Number (#90-5-1-1-10099/1), and the violations for which the stipulated penalties are being paid to the United States, in accordance with Section XIV of this Decree (Notices).

b. Stipulated penalty payments to the State shall be made by certified check made payable to the State of Michigan, Natural Resources Damages Fund, with a notation that the funds are to be used for future restoration projects, and sent to:

Accounting Services Division
Cashier's Office for DEQ – WRD 900015
PO Box 30657
Lansing, Michigan 48909-8157

c. In the case of late payments due to the Nottawaseppi Huron Band of the Potawatomi under Paragraph 14.a, Defendants shall pay all stipulated penalties due under Paragraph 17 and any Interest due under Paragraph 20, to the Nottawaseppi Huron Band of the Potawatomi by certified check made out to the Nottawaseppi Huron Band of the Potawatomi and sent to William Brooks, Chief Legal Officer, Nottawaseppi Huron Band of the Potawatomi, 1484 Mno-Bmadzewen Way, Fulton, MI 49502 by certified mail, return receipt requested.

d. In the case of late payments due to the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians be under Paragraph 14.b, Defendants shall pay stipulated penalties due under Paragraph 17 and any Interest due under Paragraph 20 to the Match-E-Be-Nash-She-

Wish Band of the Pottawatomi Indians by certified check made out to the Gun Lake Tribe and sent to Environmental Department c/o Todd Williamson, 1743 142nd Ave., Dorr, MI 49323.

22. Notwithstanding any other provision of this Section, any Party entitled to a payment under Paragraphs 10, 11 or 14, may, in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this Consent Decree, as well as any portion of the Interest that has accrued thereon.

23. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States, the State or the Tribes to seek any other remedies or sanctions available by virtue of Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based.

VIII. REIMBURSEMENT OF AMOUNTS RECEIVED FROM OSLTF

24. The Department of the Interior, acting through USFWS, has returned to the OSLTF all amounts it has received from the OSLTF with respect to claims submitted to the National Pollution Fund Center, OSLTF for adjudication. (The returned funds include \$636,479 received for adjudicated Claim No. E10527-O102, and \$167,067 received for adjudicated Claim No. E10527-O103.) At this point, the Trustees have submitted no other claims to the OSLTF for adjudication, and the Trustees agree not to submit any other claims to the OSLTF relating to the Discharges unless the Court decides not to enter this Consent Decree, or the Consent Decree becomes null and void, pursuant to Paragraph 6, above.

IX. RESTORATION ACCOUNT

25. DOI shall manage and invest funds in the Restoration Account, including any accrued interest or return on investment, for the joint benefit and use of the Federal, State, and Tribal Trustees. DOI shall not make any charge against the Restoration Account for investment,

management, or any other services provided with respect to operation of the Restoration Account.

26. Subject to approval of the Trustees, funds in the Restoration Account shall be used for Trustee-approved restoration activities consistent with the Restoration Plan, designed to restore, rehabilitate, replace or acquire the equivalent of, Natural Resources or natural resources services alleged to have been injured, lost or destroyed as a result of the Discharges. Such Trustee-approved restoration activities may include restoration planning, implementation and oversight of restoration projects, operation and maintenance of restoration projects, and monitoring of Natural Resources, as well as reimbursement of Future Costs.

27. If the funds in the Restoration Account are not sufficient to complete the activities in the Restoration Plan, then neither the Defendants nor the Trustees shall be required to expend additional funds to complete the activities in the Restoration Plan.

X. COVENANT NOT TO SUE BY PLAINTIFFS

28. Except as provided in Section XI (Reservation of Rights by Plaintiffs), below, in consideration of the payments and actions that have been and will be made by Defendants under this Consent Decree and the State Consent Judgment, the United States, the State, and the Tribes, covenant not to sue or take administrative action against the Defendants pursuant to Section 1002(b)(2) (A) of OPA, 33 U.S.C. § 2702(b)(2)(A), for recovery of : 1) past or future damages for injury to, destruction of, loss of, or loss of use of Natural Resources resulting from the Discharges, including Future Costs of Trustees, and 2) Natural Resource Damage Assessment Costs relating to the Discharges, including but not limited to moneys that the USFWS received from the OSLTF as a result of claims adjudicated on April 3, 2013 and April

16, 2013. Except as provided in Paragraph 30, below, the covenant not to sue set forth in this paragraph extends only to the Defendants and does not extend to any other person.

29. Except as provided in Section XI (Reservation of Rights by Plaintiffs), below, in consideration of the payments and actions that have been and will be made by Defendants under this Consent Decree, the State also covenants not to sue or take administrative action against Defendants under Sections 3115(2) and 20126a of the NREPA, MCL 324.3115(2) and MCL 324.20126a for recovery of: 1) past and future damages for injury to, destruction of, loss of, or loss of use of Natural Resources resulting from the Discharges, including Future Costs of State Trustees, and 2) Natural Resource Damage Assessment Costs relating to the Discharges. Except as provided in Paragraph 30, below, this covenant not to sue extends only to the Defendants and does not extend to any other person.

30. The covenants not to sue set forth in Paragraphs 28 and 29 also extend to (i) Defendants' officers, directors and employees, but only to the extent that liability is based on actions performed by such persons in their capacities as officers, directors or employees; and (ii) to successors and assigns of Defendants, but only to the extent that liability is based solely on such persons' status as a successor or assign of one or more of the Defendants.

31. The covenants not to sue in Paragraph 28 and 29, above, are conditioned upon: 1) receipt of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree; and 2) Defendants' compliance with all other obligations of this Consent Decree, including but not limited to compliance with all requirements pursuant to Section V (Activities By Defendants To Restore, Rehabilitate, or Replace Injured Natural Resources and Lost Natural Resource Services) of this Decree.

XI. RESERVATION OF RIGHTS BY THE PLAINTIFFS

32. General Reservations of Rights. Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 28 and 29, including without limitation the following:

- a. Claims based on a failure of Defendants to meet a requirement of this Consent Decree;
- b. Claims for damages that are not Natural Resource Damages as defined in Paragraph 3.p, above, including claims for any economic losses or damages paid by the OSLTF relating to the Discharges (other than claims of USFWS paid by the OSLTF prior to entry of this Consent Decree);
- c. Claims for Natural Resource Damages under the Reopener specified in Paragraph 33, below;
- d. Claims for civil penalties or injunctive relief relating to the Discharges, including claims under 33 U.S.C. §§ 1319 or 1321, and Section 3115(1)(a) of the NREPA, MCL 324.3115(1)(a);
- e. Claims under Michigan law for costs, damages, declaratory and injunctive relief, and other remedies related to the Discharges and available under the NREPA, MCL 324.101 *et seq.*, excluding claims for natural resource damages authorized under the NREPA and raised and resolved in this action;
- f. Claims under 33 U.S.C. § 2702(a) and (b)(1)(A) for removal costs relating to the Discharges, including any liability for removal cost claims paid by the OSLTF; and

g. Claims based on violations of State or Federal law that occur after the date of lodging of this Consent Decree.

33. Reopener Regarding Unknown Conditions and New Information.

Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve the right to institute proceedings against the Defendants in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damages assessment, based on: (i) conditions caused by the Discharges, unknown to the Trustees as of the date of lodging of this Consent Decree, including but not limited to conditions resulting from any removal actions selected after the date of lodging of this Consent Decree in response to the Discharges, that contribute to injury to, destruction of, loss of, or loss of use of, Natural Resources (“Unknown Conditions”); or (ii) information received by the Trustees after the date of lodging of this Consent Decree which indicates that the Discharges have resulted in injury to, destruction of, loss of, or loss of use of, Natural Resources of a type or future persistence that was unknown to the Trustees as of the date of lodging of this Consent Decree (“New Information”). For the purpose of this Paragraph: (i) an increase solely in the United States’ or the State’s or the Tribes’ assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources resulting from the Discharges shall not be considered Unknown Conditions or New Information; and (ii) the information and conditions known to the United States, the State, or the Tribes shall include any information or conditions listed or identified in records relating to the Discharges that were in the possession or under the control of DOI, including BIA and USFWS, NOAA, the State, and the Tribes as of the date of lodging this Consent Decree.

**XII. COVENANT NOT TO SUE AND
WAIVER OF CLAIMS BY THE
DEFENDANTS**

34. Defendants hereby covenant not to sue and agree not to assert or maintain any claims or causes of action against any of the Plaintiffs or their employees, agents, contractors, departments, agencies, administrations and bureaus, related to Natural Resource Damages resulting from the Discharges, including but not limited to any claim under OPA §§ 1007, 1008, 1012, 1013 or 1015(a), 33 U.S.C. §§ 2707, 2708, 2712, 2713, or 2715(a). Defendants hereby covenant and agree not to assert or maintain, any claims against the OSLTF relating to any Natural Resource Damages resulting from the Discharges, or any claims for recovery of any costs incurred by Defendants pursuant to this Consent Decree or pursuant to Sections VIII, IX, and XIX of the State Consent Judgment. If any Enbridge affiliate pursues any such claim for such costs or damages against any Plaintiff, Defendants shall indemnify the Plaintiffs for all costs incurred as a result of such claims.

35. Waiver of Certain Claims Against Other Persons. Except as provided below in this Paragraph, Defendants agree not to assert any claims and to waive all claims or causes of action that they may have against all other persons for all matters relating to Natural Resource Damages resulting from the Discharges, including claims for contribution; *provided, however*, that the Defendants reserve the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages resulting from the Discharges against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against Defendants relating to Natural Resource Damages resulting from the Discharges. Nothing in this Paragraph shall operate to waive or release any claim or action by any Defendant under any contract of insurance.

XIII. EFFECT OF SETTLEMENT

36. Except as provided in Paragraph 35 (Waiver of Certain Claims Against Other Persons), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree.

37. In any subsequent administrative or judicial proceeding initiated by the United States, the State, or the Tribes for injunctive relief, recovery of removal costs, or damages, including Natural Resource Damages, or other relief relating to the Discharges, the Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, the State or the Tribes in the subsequent proceeding were or should have been brought in the instant case; *provided, however*, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue, as set forth in Section X.

38. Nothing in this Consent Decree shall establish or be construed to establish any liability on the part of Defendants, or be used as evidence of any such liability on the part of the Defendants, in connection with claims other than Natural Resource Damages or State Natural Resource Damages Law, including other claims arising from the Discharges.

39. This Consent Decree shall not preclude the United States, the State, or the Tribes from instituting a separate or ancillary action to enforce the terms of this Consent Decree.

XIV. NOTICES

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give

notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States and the State, and the Defendant, respectively.

As to the United States:

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08748)
P.O. Box 7611
601 D Street, N.W. – Room 2121
Washington, D.C. 20044-7611 Washington, DC 20004
(for U.S. Mail) (for overnight delivery)

As to DOI:

Kelly B. Bakayza
Office of the Solicitor
U.S. Department of the Interior
Three Parkway Center - Suite 385
Pittsburgh, PA 15220

As to NOAA:

Kate Barfield
NOAA Office of General Counsel
Natural Resources Section
1315 East-West Highway, SSMC3, Room 15107
Silver Spring, MD 20910-3282

As to the State:

Polly A. Synk
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division

P.O. Box 30755 6th Floor, G, Mennen Williams Building
Lansing, MI 48909 525 West Ottawa Street
Lansing, MI 48933
(for U.S. Mail) (for overnight delivery)

As to the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians:

Todd Williamson
Environmental Department
Gun Lake Tribe
1743 142nd Ave,
Dorr, MI 49323

Attn: Notice Re Enbridge Spill Matter

As to the Nottawaseppi Huron Band of the Potawatomi:

William Brooks
Chief Legal Officer
Nottawaseppi Huron Band of the Potawatomi
1484 Mno-Bmadzewen Way
Fulton, MI 49502

Attn: Notice Re Enbridge Spill Matter

As to the Lead Administrative Trustee:

Lisa L. Williams
U.S. Fish and Wildlife Service
2651 Coolidge Road
East Lansing, MI 48823
Lisa_Williams@fws.gov

As to Enbridge:

Chris Kaitson
Vice President – US Law
Enbridge
1100 Louisiana Street,
Suite 3300
Houston, TX 77002-5217
713-821-2028
Chris.kaitson@enbridge.com

XV. APPENDICES

41. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is the proposed State Consent Judgment.

XVI. RETENTION OF JURISDICTION

42. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XVII. MODIFICATION

43. Any material modification of this Consent Decree shall be made only by written agreement of the Parties and shall take effect only upon approval by the Court.

44. Any non-material modification of this Consent Decree shall be made by written agreement of the Parties, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

45. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

46. Economic hardship or changed financial circumstances of a Defendant shall not serve as a basis for modification of this Consent Decree.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

47. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Defendants consent to the entry of this Consent Decree without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval

and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES AND SERVICE

48. The undersigned representatives of the Defendants, the Tribes, and the State, and the Assistant Attorney General of the United States, each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

49. The Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

50. Defendants shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Defendants with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The Parties agree that the Defendants need not file answers to the complaint in this action unless or until: (i) the United States has notified Defendants in writing that it no longer supports entry of this Consent Decree; or (ii) the Court expressly declines to enter this Consent Decree.

XX. FINAL JUDGMENT

51. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

52. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, the Nottawaseppi Huron Band of the Potawatomi, the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, and the Defendants as to the claims specified in Section X (Covenant Not to Sue by Plaintiffs) of this Consent Decree, subject to the reservations of rights and reopener in Section XI (Reservation of Rights by Plaintiffs) of this Consent Decree. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 3RD DAY OF DECEMBER, 2015.

/s/ Gordon J. Quist
UNITED STATES DISTRICT JUDGE
Western District of Michigan

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Natural Resource Damages Relating to July 2010 Discharges of Oil from Enbridge's Line 6B:

FOR THE UNITED STATES OF AMERICA

Date: _____

s/ John Cruden

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: June 4, 2015_____

s/ Steven J. Willey

STEVEN J. WILLEY (Ohio 0025361)
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Steven.willey@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Natural Resource Damages Relating to July 2010 Discharges of Oil from Enbridge's Line 6B:

FOR THE UNITED STATES OF AMERICA

PATRICK A. MILES, JR.
United States Attorney
Western District of Michigan

Date: June 5, 2015

s/ Ryan D. Cobb
RYAN D. COBB
Assistant United States Attorney
Western District of Michigan
330 Ionia Avenue, N.W.
Suite 501
Grand Rapids, MI 49503
616-456-2404
Ryan.cobb@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Natural Resource Damages Relating to July 2010 Discharges of Oil from Enbridge's Line 6B:

FOR THE STATE OF MICHIGAN

BILL SCHUETTE
Attorney General of Michigan

Date: 5-19-15

s/ Polly Synk
POLLY SYNK
Assistant Attorney General
Environment, Natural Resources and Agriculture
Division
P.O. Box 30755
Lansing, MI 48909
517-373-7540
synkp@michigan.gov

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Natural Resource Damages Relating to July 2010 Discharges of Oil from Enbridge's Line 6B:

FOR THE NOTAWASEPPI HURON BAND OF
THE POTAWATOMI


Date: 5/14/15_____

s/ William J. Brooks
WILLIAM J. BROOKS
Chief Legal Counsel
William J. Brooks PLLC
PO Box 607
Manistee, MI 49660
231-233-2559
bbrooks@nhbpi.com

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Natural Resource Damages Relating to July 2010 Discharges of Oil from Enbridge's Line 6B:

FOR THE MATCH-E-BE-NASH-SHE-WISH
BAND OF THE POTTAWATOMI INDIANS

Date: 5-01-2015

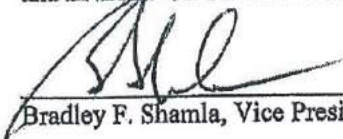


DAVID K. SPRAGUE
Chairman

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Natural Resource Damages Relating to July 2010 Discharges of Oil from Enbridge's Line 6B:

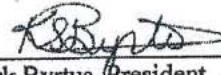
FOR DEFENDANTS ENBRIDGE ENERGY, L.P.,
ENBRIDGE PIPELINES (LAKEHEAD) L.L.C.,
ENBRIDGE ENERGY PARTNERS, L.P.,
ENBRIDGE ENERGY MANAGEMENT,
L.L.C., ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE PIPELINES INC.

Date: April 30, 2015


Bradley F. Shamla, Vice President EK

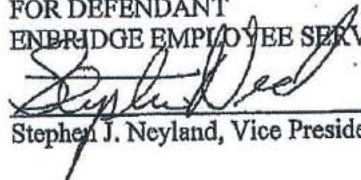
FOR DEFENDANT
ENBRIDGE OPERATIONAL SERVICES, INC.,

Date: April 30, 2015


Kirk Byrtus, President EK

FOR DEFENDANT
ENBRIDGE EMPLOYEE SERVICES, INC.,

Date: April 30, 2015


Stephen J. Neyland, Vice President EK