

C R O W L E Y F L E C K PLLP

Wade C. Mann  
400 East Broadway, Suite 600  
P.O. Box 2798  
Bismarck, ND 58502-2798  
701.223.6585  
wmann@crowleyfleck.com

March 21, 2012

*via Hand Delivery*

Mr. Darrell Nitschke  
Executive Director  
North Dakota Public  
Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**RECEIVED**

**MAR 21 2012**

**PUBLIC SERVICE COMMISSION**

Dear Mr. Nitschke:

In re: Supplemental Filing of  
Enbridge Pipelines (North Dakota) LLC  
Docket No. PU-11-232  
Application for a Certificate of Corridor Compatibility  
and Application for a Route Permit  
Berthold Station Expansion Project  
Ward County, North Dakota  
Our File No. 31-411-005

Enclosed please find for filing the original and ten copies of Supplemental Filing of Enbridge Pipelines (North Dakota) LLC's Application for a Certificate of Corridor Compatibility and Application for a Route Permit for the Berthold Station Expansion Project.

Please call should you have any questions.

Very truly yours,



WADE C. MANN

bw  
Enc.  
cc: Ward County Auditor

**22** **PU-11-232** Filed: 3/21/2012 Pages: 35  
**Supplemental filing of Application**

BILLINGS BISMARCK BOZEMAN HELENA KALISPELL

Enbridge Pipelines (North Dakota) LLC  
Wade Mann, Crowley Fleck, PLLP



**NORTH DAKOTA PUBLIC SERVICE COMMISSION**

**SUPPLEMENTAL FILING OF  
ENBRIDGE PIPELINES (NORTH DAKOTA) LLC  
Docket No. PU-11-232  
Application for a Certificate of Corridor Compatibility  
And  
Application for a Route Permit**

**BERTHOLD STATION EXPANSION PROJECT  
March 2012**



**BERTHOLD STATION EXPANSION PROJECT**  
**TABLE OF CONTENTS**

<b><u>EXPLANATION</u></b>	
<b>Supplement Filing to Application for Corridor Certificate and Route Permit</b>	
<b>Exhibit D.2</b>	<b>COE Jurisdictional Determination</b>
<b>Exhibit F.1</b>	<b>U.S. Department of Fish and Wildlife Service Correspondence</b>
<b>Exhibit F.2</b>	<b>North Dakota Game and Fish Correspondence</b>
<b>Exhibit F.3</b>	<b>North Dakota Parks and Recreation Correspondence</b>
<b>Table 1– Route Permit</b>	<b>Updated List of Other Required Permits</b>

**EXHIBIT D.2**  
**SUPPLEMENTAL FILING**  
**TO**  
**APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY**  
**AND**  
**ROUTE PERMIT**

**BERTHOLD STATION EXPANSION PROJECT**  
**Docket No. 11-232**  
**March 2012**

**Berthold Station Expansion Project PSC Supplemental Filing:**

*Exhibit D.2 – Approved US Army Corps of Engineers Jurisdictional Determination (Berthold South)*

In November 2011 on behalf of Enbridge, Merjent, Inc. (“Merjent”) of Minneapolis, MN, submitted a request for Jurisdictional Determination to the U.S. Army Corps of Engineers (“COE”) - Omaha District (North Dakota Regulatory Office) for the field-delineated wetland features for the Berthold South parcel, described in previously filed Exhibit D.1.

The COE responded to the Jurisdictional Determination Request on January 11, 2012, concluding that the delineated wetlands in the project area are not jurisdictional waters of the United States, and therefore, not subject to COE regulatory authorities or permitting. The approved COE Jurisdictional Determination is included herein as Exhibit D.2.



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NORTH DAKOTA REGULATORY OFFICE  
1513 SOUTH 12<sup>TH</sup> STREET  
BISMARCK ND 58504-6640  
January 11, 2012

[NWO-2011-2543-BIS]

Merjent, Inc.  
Attn: Paul Hartzheim  
615 First Avenue NE  
Suite 425  
Minneapolis, MN 55413

Dear Mr. Hartzheim:

We have reviewed your request for a Department of the Army (DA) jurisdictional determination, on behalf of Enbridge Pipelines (North Dakota), LLC (Enbridge), on 58 wetlands, located west of the City of Berthold, North Dakota. Enbridge is proposing to construct a rail loop and associated piping / infrastructure in order to connect to their existing Berthold Station. This proposed crude oil station expansion project is located in Section 20 and the SW¼ of Section 21, Township 156 North, Range 86 West, Ward County, North Dakota.

Based on the information that you provided, we have determined that the wetlands identified in the project area are not jurisdictional waters of the United States. Therefore, the proposed station expansion project is not subject to DA regulatory authorities and no permit pursuant to Section 404 of the Clean Water Act is required from the Corps of Engineers.

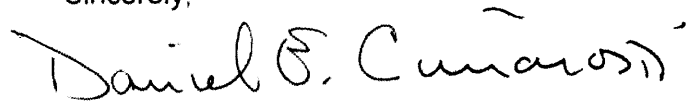
An approved jurisdictional determination (JD) has been completed for the project area. The JD will be made available to you upon request, or it may be viewed at our website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>. The JD will be available on the website within 30 days. You may also request copies of the supporting materials the Corps used in determining this jurisdiction. If you are not in agreement with the JD, you may request an administrative appeal under Corps of Engineers regulations found at 33 C.F.R. 331. The request for appeal must be received within 60 days from the date of this correspondence. If you would like more information on the jurisdictional appeal process, contact this office. It is not necessary to submit a Request for Appeal if you do not object to the JD. The JD will be valid for a period of 5 years from the date of this letter.

This determination has been conducted to identify the limits of the Corps of Engineers Clean Water Act jurisdiction for the particular site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenants are USDA program participants, or anticipate participation in the USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

Although a DA permit is not required for this project, this does not eliminate the requirement that you obtain any other applicable Federal, State, Tribal or local permits as required.

Should you have any questions regarding this determination, please do not hesitate to contact Jason Renschler of this office at telephone number (701)-255-0015 or at the letterhead address and reference project number NWO-2011-2543-BIS.

Sincerely,

A handwritten signature in cursive script that reads "Daniel E. Cimarosti". The signature is written in black ink and is positioned above the typed name.

Daniel E. Cimarosti  
Regulatory Program Manager  
North Dakota

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 11 January 2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Omaha District; Merjent / Enbridge; NWO-2011-2543-BIS.

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: North Dakota.

County/parish/borough: Ward County.

City: Berthold.

Center coordinates of site (lat/long in degree decimal format):

Wetland No.:	Latitude(dd nad83)	Longitude dd nad83)	Wetland Size (Within project review area):
1	48.315054	-101.744741	0.41
2	48.314106	-101.745006	0.78
3	48.313124	-101.747305	1.62
4	48.314909	-101.746731	0.85
5	48.314132	-101.747667	0.23
6	48.314567	-101.748334	0.04
7	48.316011	-101.747910	0.03
8	48.315684	-101.749387	0.16
9	48.314880	-101.749239	0.13
10	48.314397	-101.749491	0.49
11	48.313771	-101.750605	0.11
12	48.313830	-101.751288	0.09
13	48.314005	-101.752403	1.41
14	48.313140	-101.752506	0.59
15	48.313842	-101.753503	0.15
16	48.315439	-101.750777	0.22
17	48.315087	-101.752217	0.36
18	48.314598	-101.750947	0.06
19	48.314585	-101.750106	0.31
20	48.316371	-101.751051	0.33
21	48.314694	-101.753439	0.38
22	48.314369	-101.754595	0.29
23	48.314204	-101.754220	0.04
24	48.315227	-101.755300	0.14
25	48.315271	-101.754349	0.10
26	48.314462	-101.755834	.091
27	48.313429	-101.755602	0.17
28	48.312982	-101.754914	0.29
29	48.316126	-101.753694	3.88
30	48.317176	-101.753592	0.13
31	48.317156	-101.754353	0.15
32	48.318052	-101.754986	0.26
33	48.316215	-101.757385	2.39
34	48.315462	-101.757245	0.11

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: December 9, 2011.  
 Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.  
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs  
 Non-RPWs that flow directly or indirectly into TNWs  
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  
 Impoundments of jurisdictional waters  
 Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: linear feet: width (ft) and/or acres.  
Wetlands:

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **These are 58 isolated wetlands identified within the project area. Wetlands identified are not jurisdictional. Not used for recreation or industrial purposes. There is no nexus to interstate commerce. The wetlands lack a discernable surface connection to WoUS. The wetlands also lack sufficient evidence of hydrologic and ecological interaction with a WoUS.**

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW:

Summarize rationale supporting determination:

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
 Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.



## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: <b>Merjent / Enbridge Pipelines (ND)</b>	File Number: <b>2011-2543-BIS</b>	Date: 1/11/12
Attached is:		See Section below
<input type="checkbox"/>	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	C. PERMIT DENIAL	C
<input checked="" type="checkbox"/>	D. APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/ceewo/reg> or Corps regulations at 33 CFR Part 331.**

**A: INITIAL PROFFERED PERMIT:** You may accept or request modification of the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **REQUEST MODIFICATION:** If you object to the permit (LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- **RECONSIDERATION BASED ON NEW INFORMATION:** You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II** –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

- A. Modification of an INITIAL PROFFERED PERMIT (Item A).
- D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

- B. Administrative Appeal of a PROFFERED PERMIT (Item B).
- C. Administrative Appeal of a PERMIT DENIAL (Item C).
- D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**SUBMITTAL OF NEW OR ADDITIONAL INFORMATION:** The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:  
DISTRICT ENGINEER  
Attn: Daniel E. Cimarosti  
1513 South 12<sup>th</sup> Street  
Bismarck, North Dakota 58504  
Telephone: (701) 255-0015

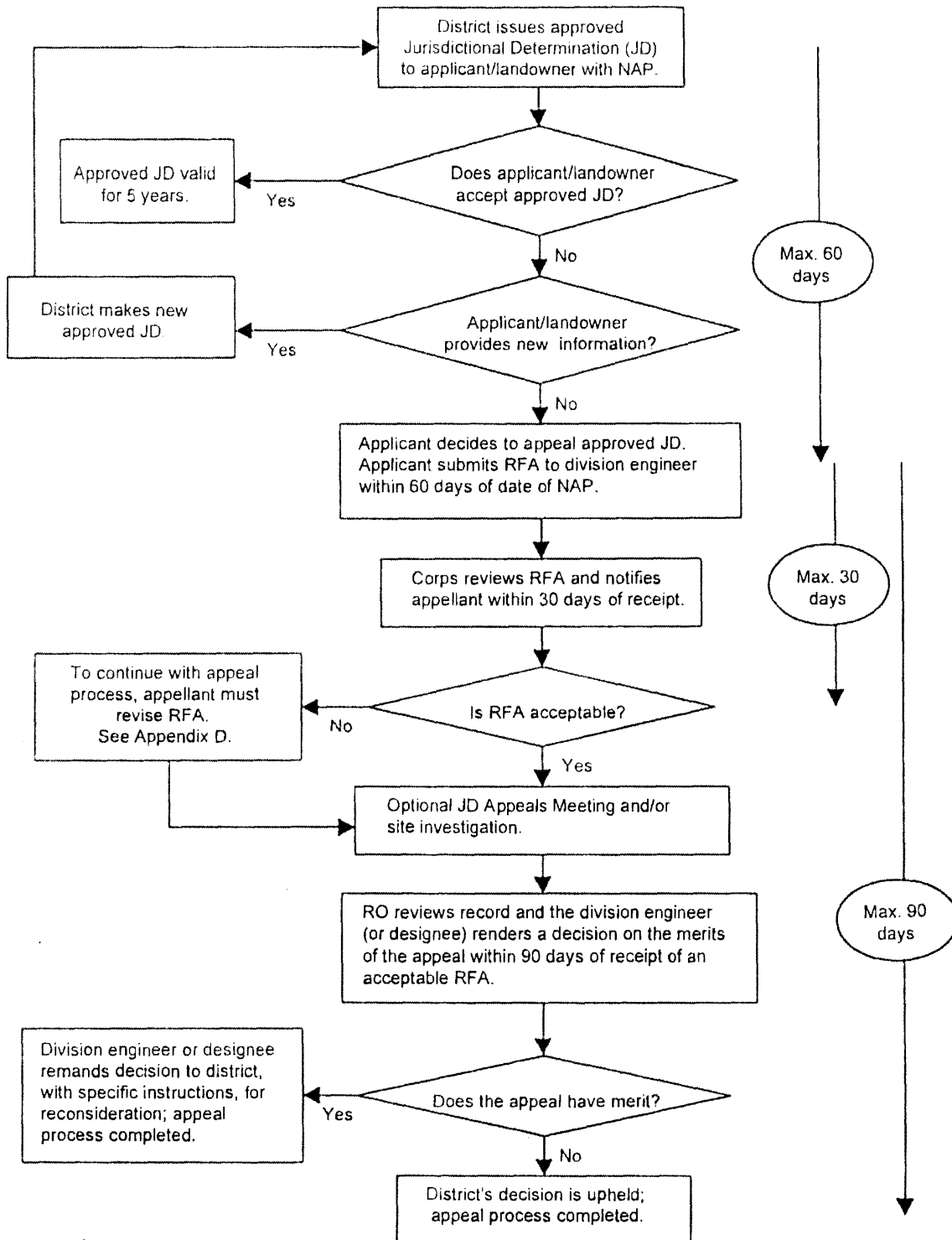
If you wish to submit an appeal or have questions regarding the appeal process you may contact:  
US Army Corps of Engineers, Northwestern Division  
Attn: David Gesl, Appeal Review Officer  
PO Box 2870  
Portland, OR 97208-2870  
Telephone: (503) 808-3825

(Use this address for submittals to the District Engineer)

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<p>_____ Signature of appellant or agent.</p>	<p>Date:</p>	<p>Telephone number:</p>
---	--------------	--------------------------

## Administrative Appeal Process for Approved Jurisdictional Determinations



**EXHIBIT F.1**  
**SUPPLEMENTAL FILING**  
**TO**  
**APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY**  
**AND**  
**ROUTE PERMIT**

**BERTHOLD STATION EXPANSION PROJECT**  
**Docket No. 11-232**  
**March 2012**

## **Berthold Station Expansion Project PSC Supplemental Filing:**

### *Exhibit F.1 – FWS response letter and EPNDs response*

Enbridge submitted a consultation letter to the U.S. Fish and Wildlife Service (“FWS”) on November 23, 2011, seeking review of the project for concerns related to federally-listed threatened and endangered species and critical habitat. EPND’s original letter to the FWS stated that the project may impact U.S. Army Corps of Engineers (COE) jurisdictional wetlands and potentially requiring a federal permit. However, since the time the letter was submitted to the FWS, the COE reviewed the project and determined that none of the wetlands within the project area are COE jurisdictional (per COE Jurisdictional Determination issued on January 11, 2012; filed as Exhibit D.2). Therefore, because there are no other federal permits required, there is no federal nexus for the proposed project.

The FWS responded in a letter dated February 16, 2012, (attached as Exhibit F.1) providing comments and recommendations on the project. Below is a summary of those comments/recommendations and Enbridge’s response to each (in italicized text):

- 1) **High Value Habitat Avoidance** – The FWS indicated that based on a review of its county plat maps, Service Property interests are located near the project area, and suggested that Enbridge contact the Audubon National Wildlife Refuge for additional information on Service easements.

*Based on recent consultations with FWS for its Beaver Lodge Loop Project (PSC Case #PU-10-613), Enbridge identified and confirmed locations of FWS easements in the study area. No easements are located within the project area itself. Additionally, Enbridge has confirmed private ownership of all property impacted by the project directly and no FWS-easements are present. Should the location of the project change, Enbridge would conduct additional consultation with Lloyd Jones, Project Manager for the Audubon National Wildlife Refuge regarding FWS easement lands.*

- 2) **Wetlands** – As stated above, none of the wetlands within the project area are under the regulatory authority of the US Army Corps of Engineers, and there is no federal nexus for the project. The FWS made the following recommendations regarding wetlands:

- a. Locate construction to avoid placement of fill in wetlands along the route;
- b. Replace unavoidable loss of wetland habitat with functionally equivalent wetlands; and
- c. Install and maintain appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels.

*Siting of the transmission facilities (as described in Section A.3 of the previously filed Application for Corridor Certificate) involved selecting a location/route that minimized overall impacts on natural resources and wetlands. As such, no permanent wetland impacts will occur as a result of constructing the transmission facilities. Minor, temporary impacts to wetlands may occur during construction activities; however, Enbridge will implement mitigation measures to minimize impacts to wetlands as described in its Environmental Mitigation Plan (previously filed as Exhibit E).*

- 3) **Whooping Crane Habitat** – The FWS notes that construction within a significant acreage of suitable stopover wetlands could indirectly affect migrating whooping cranes, through

avoidance of the site resulting in cranes seeking alternate habitat. The Service recommends mapping wetlands at the project site, identifying potentially suitable whooping crane stopover habitat, and analyzing the potential effects to migrating whooping cranes from loss of use of this habitat for migration stopovers.

*Although the project area does contain suitable stopover habitat for migrating whooping cranes, given the existing structures, proximity to the City of Berthold, human activity/roadways near the proposed project site, and the available feeding and roosting habitat adjacent to the project site,<sup>1</sup> Enbridge believes that whooping crane use of this area would be an unlikely occurrence, and that the birds would preferentially avoid the construction area during flight, choosing to stop elsewhere during migration. In addition, Enbridge will suspend construction and contact the FWS if a whooping crane is sighted within one-mile of construction activities.*

- 4) **Dakota skipper and Sprague's pipit** – The FWS recommends that the project avoid impacts to potential Dakota skipper and Sprague's pipit habitat.

*Enbridge conducted a habitat assessment of the project area in September and October 2011 (previously filed Exhibit D.1b). The assessment inventoried the project area for vegetative communities and habitats that could support federally listed (threatened, endangered, and candidate) species, and concluded that suitable habitat does not exist in the project area for the Dakota skipper or Sprague's pipit.*

- 5) **Migratory Birds** – The FWS recommends scheduling construction for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of bald or golden eagles or other migratory birds, their eggs, or active nests, the Service recommends that the project proponent implement all practicable measures to avoid all take, such as suspending construction where necessary and/or maintaining adequate buffers to protect the birds until the young have fledged. The Service further recommends that if you choose to conduct field surveys for nesting birds, including eagles, with the intent of avoiding take that you maintain any documentation of the presence of eagles or other migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the survey(s), and any avoidance measures implemented at the project site. Should surveys or other available information indicate a potential for take of eagles or other migratory birds, their eggs, or active nests, the Service requests that you contact this office for further coordination on the extent of the impact and the long-term implications of the intended use of the project on eagles or other migratory bird populations.

*No raptors or raptor nests were observed in the project area at the time of the habitat assessment (previously filed Exhibit D.1b) that was conducted in the fall of 2011. The current land use in the project area is primarily cultivated land, which was harvested in Fall 2011. As there are no plans to reseed the area prior to initiation of construction activities, the project area is effectively clear of ground vegetation.*

---

<sup>1</sup> According to the FWS National Wetland Inventory [NWI], there are over 5,300 wetlands totaling 3,900 acres within a 5-mile radius of the project

*In addition, Enbridge will be contracting a qualified biologist to conduct a survey for raptors and raptor nests prior to construction (currently scheduled for late-March). If raptors or raptor nests are identified, Enbridge will notify and coordinate with the FWS to develop appropriate mitigation and avoidance measures.*



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501

FEB 16 2012



Mr. Paul Hartzheim, Senior Analyst  
Merjent  
800 Washington Ave N, Suite 315  
Minneapolis, Minnesota 55401

Re: Proposed Enbridge Berthold Station  
Expansion Project, Ward County, North  
Dakota

Dear Mr. Hartzheim:

This is in response to your letter dated November 23, 2011, concerning the proposed Enbridge Pipelines (North Dakota) LLC (Enbridge) Berthold Station Expansion Project. The project would involve the construction of approximately 1,200 feet of 16-inch diameter and 5,400 feet of 20-inch diameter pipeline, new tanks, transfer pumps and associated appurtenances, to be located one mile west of the City of Berthold, Ward County, North Dakota.

Specific location for the proposed project is:

T. 156 N., R. 86 W., Sections 20, 21

The U.S. Fish and Wildlife Service (Service) offers the following comments under the authority of and in accordance with the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (ESA), Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) (MBTA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), and the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57).

### **High Value Habitat Avoidance**

As part of the National Wildlife Refuge System, the Service administers fee title Refuge and Waterfowl Production Areas, as well as wetland and grassland easements, throughout North Dakota. A review of our county plat maps indicates that Service property interests are located near the project area. Please contact Lloyd Jones, Project Leader, Audubon National Wildlife Refuge, 3275 11<sup>th</sup> St. NW, Coleharbor, ND 58531-9419; Phone: (701)

442-5474; Email: [lloyd\\_jones@fws.gov](mailto:lloyd_jones@fws.gov), for additional information on Service easements.

Our review of National Wetland Inventory (NWI) maps indicates that wetland areas are located within the project area. Your February 9, 2012, email to Heidi Riddle of my staff indicated that you had coordinated with the Army Corps of Engineers Regulatory Division, and that the wetlands within the project area are non-jurisdictional under their authorities. North Dakota's "prairie potholes" and their surrounding grasslands are highly productive and support an incredible diversity of wildlife. The area provides habitat for both breeding and migrating birds, as well as a host of other wetland and native grassland dependent species, including waterfowl, shorebirds and grassland birds. We recommend that you avoid construction in these habitat types whenever possible. The Service suggests that the project proponent include a detailed plan to avoid, or mitigate for unavoidable impacts to wetlands. If your project will result in unavoidable impacts to wetlands, we request to review a mitigation plan to compensate for all wetland losses.

### **Threatened and Endangered Species**

A list of federally endangered and threatened species that may be present within the proposed project's area of influence is enclosed. This list fulfills requirements of the Service under Section 7 of the ESA. This list remains valid for 90 days.

The Aransas Wood Buffalo Population (AWBP) of whooping cranes is the only self sustaining migratory population of whooping cranes remaining in the wild. These birds breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

The project area appears to be located within the whooping crane migration corridor that includes 95 percent of all confirmed whooping crane sightings in North Dakota (enclosure). The presence of suitable roosting and feeding habitat for whooping cranes document the potential for whooping crane presence in the proposed project area. Construction within a significant acreage of suitable stopover wetlands could also indirectly affect migrating cranes, through avoidance of the site resulting in cranes seeking alternate habitat. This avoidance may deny them the use of important habitat, and thus may result in an adverse effect in the form of harm by habitat modification. Whooping cranes use migration stopover habitat opportunistically and may not use the same stopovers annually. Whooping cranes often stop wherever they happen to be late in the day when they find conditions no longer suitable for migration. This tendency can make for a very unpredictable pattern of stopover use, depending on daily weather conditions. The Service recommends mapping wetlands at the project site, identifying potentially suitable whooping crane stopover habitat, and analyzing the potential effects to migrating whooping cranes from loss of use of this habitat for migration stopovers.

The Dakota skipper is a small to medium-sized hesperiine butterfly associated with high quality prairie ranging from wet-mesic tallgrass prairie to dry-mesic mixed grass prairie. The first type of habitat is relatively flat and moist native bluestem prairie. Three species of wildflowers are usually present: wood lily (*Lilium philadelphicum*), harebell (*Campanula rotundifolia*), and smooth camas (*Zygadenus elegans*). The second habitat type is upland (dry) prairie that is often on ridges and hillsides. Bluestem grasses and needlegrasses dominate these habitats. On this habitat type, three wildflowers are typically present in high quality sites that are suitable for Dakota skipper: pale purple (*Echinacea pallida*) and upright (*E. angustifolia*) coneflowers and blanketflower (*Gaillardia sp.*). Because of the difficulty of surveying for Dakota skippers and a short survey window, we recommend that the project avoid any impacts to potential Dakota skipper habitat. If Dakota skipper habitat is present near the proposed project, and you intend to take precautions to avoid impacts to skipper habitat, please notify the Service for further direction.

In 2010, the Sprague's pipit was added to the candidate species list. Migratory bird species such as the Sprague's pipit that are candidates are still protected under the MBTA. Sprague's pipits require large patches of grassland habitat for breeding, with preferred grass height between 4 and 12 inches. The species prefers to breed in well-drained, open grasslands and avoids grasslands with excessive shrubs. They can be found in lightly to heavily grazed areas. They avoid intrusive human features on the landscape, so the impact of a development can be much larger than the actual footprint of the feature. If Sprague's pipit habitat is present within or adjacent to the proposed project area, the Service requests that you document any steps taken to avoid and minimize disturbance of this habitat.

For candidate species such as the Dakota skipper and Sprague's pipit, there is additional management flexibility available which entails developing a Candidate Conservation Agreements with Assurances (CCAA). CCAs are formal, voluntary agreements between the Service and one or more parties to address the conservation needs of one or more candidate species. Participants voluntarily commit to implement specific actions designed to remove or reduce threats to the covered species. CCAs can involve both federal and non-federal lands. In some cases, these agreements have been so successful that listing the species proved to be unnecessary. If you would like more information on these programs, please notify the Service for further coordination.

### **Migratory Birds**

The Migratory Bird Treaty Act prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the MBTA has no provision for allowing unauthorized take, the Service realizes that some birds may be killed during construction even if all known reasonable and effective measures to protect birds are used. The Service Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and agencies that have taken effective steps to avoid take of

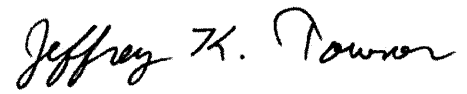
migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take. Federal agencies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

To avoid take and minimize disturbance to fish and wildlife resources in the project area the Service provides the following recommendations:

- To the extent practicable, schedule construction for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of bald or golden eagles or other migratory birds, their eggs, or active nests, the Service recommends that the project proponent implement all practicable measures to avoid all take, such as suspending construction where necessary and/or maintaining adequate buffers to protect the birds until the young have fledged. The Service further recommends that if you choose to conduct field surveys for nesting birds, including eagles, with the intent of avoiding take that you maintain any documentation of the presence of eagles or other migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the survey(s), and any avoidance measures implemented at the project site. Should surveys or other available information indicate a potential for take of eagles or other migratory birds, their eggs, or active nests, the Service requests that you contact this office for further coordination on the extent of the impact and the long-term implications of the intended use of the project on eagles or other migratory bird populations.
- Locate construction to avoid placement of fill in wetlands along the route.
- Replace unavoidable loss of wetland habitat with functionally equivalent wetlands.
- Install and maintain appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels.

Thank you for the opportunity to comment on this project proposal. If additional information is required, please contact Heidi Riddle of my staff, or contact me directly at (701) 250-4481 or at the letterhead address.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey K. Towner". The signature is written in a cursive style with a large initial 'J' and 'T'.

Jeffrey K. Towner  
Field Supervisor  
North Dakota Field Office

Enclosures

cc: ACOE, Bismarck, ND  
Attn: Dan Cimarosti  
NDGFD, Bismarck, ND  
USFWS, Audubon NWR

FEDERAL THREATENED, ENDANGERED, AND CANDIDATE SPECIES  
AND DESIGNATED CRITICAL HABITAT FOUND IN  
FOUND IN WARD COUNTY, NORTH DAKOTA

**ENDANGERED SPECIES**

Birds

Whooping crane (Grus Americana): Aransas-Wood Buffalo Population (264 birds) occurs in North Dakota counties during spring and fall migration between breeding and wintering areas. Whooping cranes prefer to roost overnight in shallow open water wetland habitat with good visibility during migration stopovers.

Mammals

Gray wolf (Canis lupus): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

**THREATENED SPECIES**

Birds

Piping plover (Charadrius melodus): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

**CANDIDATE SPECIES**

Birds

Sprague's Pipit (Anthus spragueii): Nests in native and planted grassland. Prefers patches of grassland at least 72 acres (29 hectares).

Invertebrates

Dakota skipper (Hesperia dacotae): Found in native prairie containing a high diversity of wildflowers and grasses. Habitat includes two prairie types: 1) low (wet) prairie dominated by bluestem grasses, wood lily, harebell, and smooth camas; 2) upland (dry) prairie on ridges and hillsides dominated by bluestem grasses, needlegrass, pale purple and upright coneflowers and blanketflower.

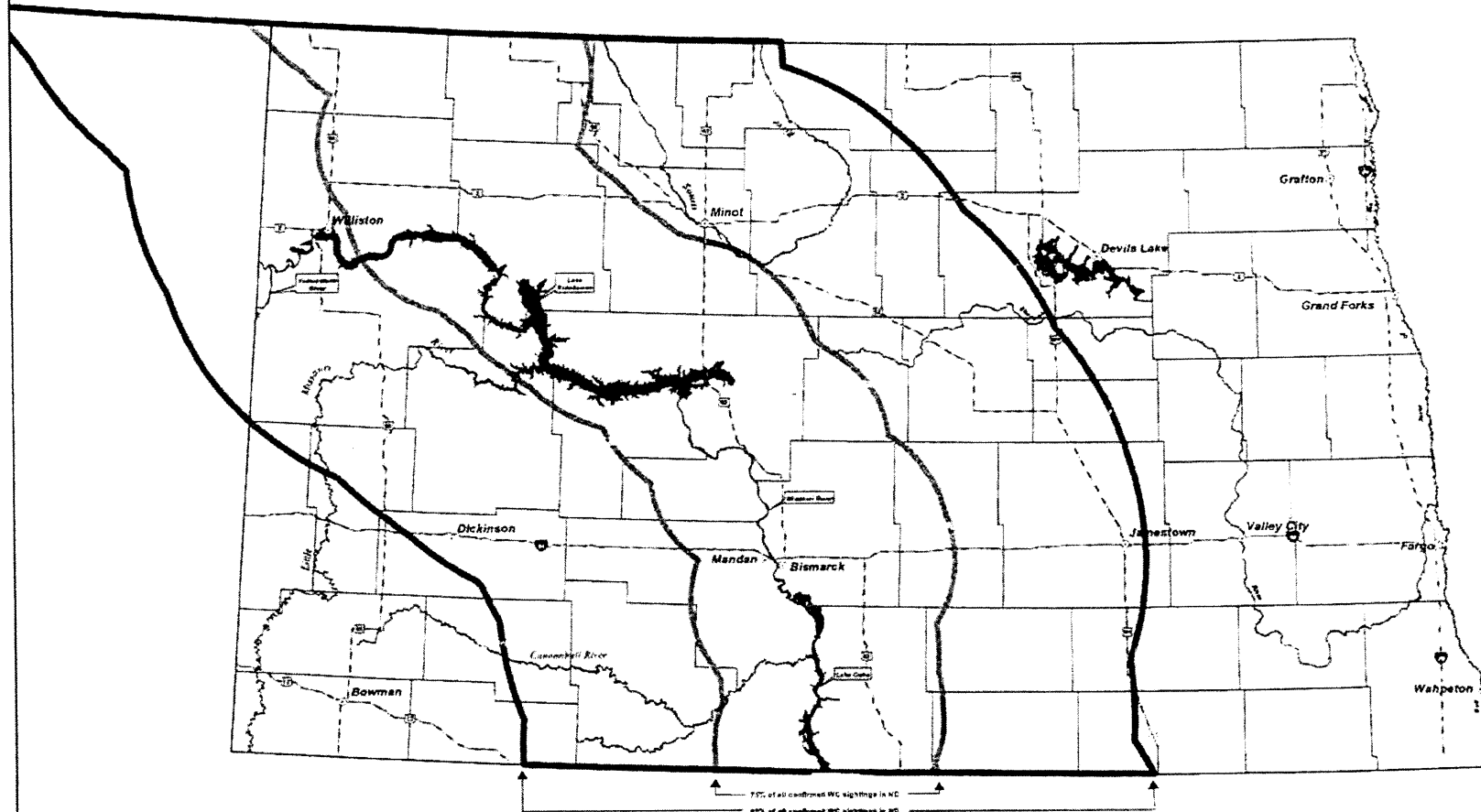
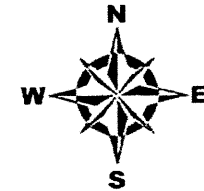
## **DESIGNATED CRITICAL HABITAT**

### Birds

Piping Plover - Alkali Lakes and Wetlands - Critical habitat includes: (1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 feet (61 meters) above the high water mark of the alkali lake or wetland.





# North Dakota Whooping Crane Migration Corridor

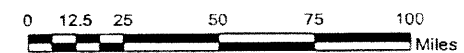


**DISCLAIMER:**

The USFWS makes no claim as to the accuracy or completeness of the displayed information. Species occurrence and habitat information is provided for illustrative purposes only. Federal action agencies and project proponents should contact the USFWS North Dakota Field Office for more detailed species information and technical assistance in evaluating potential project impacts to fish and wildlife resources.

Map produced 04/21/2010 by USFWS Ecological Services, Bismarck, ND.

-  75% Whooping Crane Migration Corridor
-  95% Whooping Crane Migration Corridor



**EXHIBIT F.2**  
**SUPPLEMENTAL FILING**  
**TO**  
**APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY**  
**AND**  
**ROUTE PERMIT**

**BERTHOLD STATION EXPANSION PROJECT**  
**Docket No. 11-232**  
**March 2012**

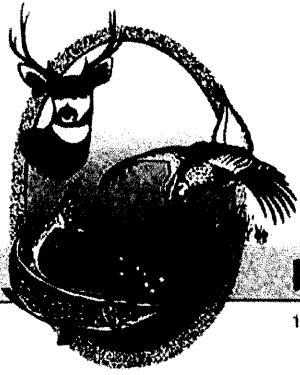
**Berthold Station Expansion Project PSC Supplemental Filing:**

*Exhibit F.2 – North Dakota Game and Fish Department response*

In November 2011, on behalf of Enbridge, Merjent, Inc. (“Merjent”) of Minneapolis, Minnesota, submitted a letter to the North Dakota Game and Fish (“NDGF”) Department, requesting review of the project and study area for concerns related to North Dakota conservation species and NDGF-administered land. In a December 13, 2011 response, NDGF concluded that the project will not directly impact Species of Conservation Priority or PLOTS (Private Land Open To Sportsmen) land.

NDGF suggested consulting with the US Army Corps of Engineers (“COE”) regarding potential impacts to on-site wetlands. As described in the original filing with the PSC, in a September 8, 2011 response, the COE concluded that none of the wetlands in the Berthold West parcel are within the Corps’ jurisdiction (previously filed as Exhibit D.2). In a January 11, 2012 response, the COE concluded that none of the wetlands within the Berthold South parcel are within their jurisdiction (filed as Exhibit D.2 as a part of this supplemental filing).

The NDGF response letter is included herein as Exhibit F.2.



"VARIETY IN HUNTING AND FISHING"

## **NORTH DAKOTA GAME AND FISH DEPARTMENT**

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

December 13, 2011

Paul Hartzheim  
Merjent  
800 Washington Avenue North  
Suite 315  
Minneapolis, MN 55401

Dear Mr. Hartzheim:

Re: Berthold Station Expansion

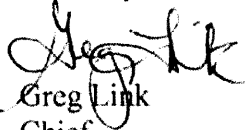
The North Dakota Game and Fish Department has received notification of Enbridge Pipelines proposal to expand its Berthold Station. The proposed construction would consist of constructing a pipeline from the existing Berthold Station to a new rail loading facility. It would consist of installing approximately 1,200 feet of 16-inch diameter pipe and 5,400 feet of 20-inch diameter pipe, 2 new crude oil storage tanks, transfer pumps and associate appurtenances. The proposed expansion is planned in the Sections 20 & 21, Township 156 North, Range 86 West in Ward County, North Dakota.

The Department reviewed your proposal for Species of Conservation Priority and for the presence of PLOTS lands. From the information you provided us, it appears the project will not directly impact any Species of Conservation Priority or impact any PLOTS lands. However, the project site could potentially impact some wetlands and linear drainages. It's important to maintain the existing drainage patterns to reduce impacts both upstream and downstream of the site.

A primary component of low impact development is the promotion of the natural processes which can be achieved through inclusion of "on site" wetlands, grassed swales, natural vegetation, detention ponds, bioretention and infiltration devices. These methods if applied correctly can be effective in reducing runoff volumes, reducing erosion in tributaries, increasing infiltration, and minimizing the off-site transport of pollutants. Additionally, these features can be aesthetically pleasing, improve wildlife habitat, and reduce site development costs.

The Department recommends planning around wetlands when possible; however, when these areas cannot be avoided, we suggest contacting the Corps of Engineers' North Dakota Regulatory Office or the Natural Resource Conservation Service due to probable impacts to wetland acres. The Department recommends a mitigation plan be submitted with any necessary permit applications to facilitate the review process. We also request that the potential for sedimentation entering the receiving water body during the construction be minimized with the use of erosion control measures.

Sincerely,



Greg Link

Chief

Conservation & Communication Division

blk

**EXHIBIT F.3**  
**SUPPLEMENTAL FILING**  
**TO**  
**APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY**  
**AND**  
**ROUTE PERMIT**

**BERTHOLD STATION EXPANSION PROJECT**  
**Docket No. 11-232**  
**March 2012**

**Berthold Station Expansion Project PSC Supplemental Filing:**

*Exhibit F.3 – North Dakota Parks and Recreation response*

In November 2011, on behalf of Enbridge, Merjent, Inc. (“Merjent”) of Minneapolis, Minnesota, submitted a letter to the North Dakota Parks and Recreation (“NDPR”) Department, requesting review of the project for concerns related to recreation and biological resources. In a December 12, 2011 response, NDPR concluded that there are no known occurrences of unique or significant ecological communities within the project area or an approximate one-mile radius of the project. The response also identified two NDGF-administered Land and Water Conservation project sites within the one-half mile study area of the project: Berthold Walther Park and Berthold Playground. The sites are located in the same area within the city limits of Berthold. Enbridge identified this area in its original filing with the PSC (location displayed on the Exclusion/Avoidance maps, Exhibit I.1). The park and playground are located approximately one-half mile from the easternmost portion of the project area and will not be impacted by project activities.

NDPR also recommended the impacted areas be revegetated with native plant species. Enbridge is currently proposing to revegetate impacted areas with native species, where feasible. The NDGF response letter is included herein as Exhibit F.3.



Jack Dalrymple, Governor  
Mark A. Zimmerman, Director

1600 East Century Avenue, Suite 3  
Bismarck, ND 58503-0649  
Phone 701-328-5357  
Fax 701-328-5363  
E-mail [parkrec@nd.gov](mailto:parkrec@nd.gov)  
[www.parkrec.nd.gov](http://www.parkrec.nd.gov)

December 12, 2011

Paul Hartzheim  
Mergent  
Suite 3  
800 Washington Ave. N  
Minneapolis, MN 55401

Re: Enbridge: Berthold Station Expansion Project

Dear Paul Hartzheim,

The North Dakota Parks and Recreation Department (the Department) has reviewed the above referenced proposed expansion of Enbridge pipeline system and distribution facilities in Ward County.

Our agency scope of authority and expertise covers recreation and biological resources (in particular rare plants and ecological communities). The project as defined does not affect state park lands that we manage but may affect state Land and Water Conservation Fund (LWCF) project sites that we manage. A map with LWCF project locations has been attached. There are two Land and Water Conservation Fund (LWCF) sites within the project boundary. The Berthold Walther Park (#38-00191) and the Berthold Playground (#38-01164) both received assistance from the federal Land and Water Conservation Fund and are under protection of section 6(f) of the LWCF Act. Any property taken from within the 6f boundary of these sites for non-recreational use must be replaced with property of equal market value. Should any public or private utilities need to be added or relocated on the LWCF recreational lands, the NDPRD must be consulted prior to any action taken. Please contact Jessica Riepl (701-328-5364 or [jriepl@nd.gov](mailto:jriepl@nd.gov)) if additional LWCF information is needed.

The North Dakota Natural Heritage biological conservation database has been reviewed to determine if any current or historic plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, there are no known occurrences within or adjacent to the project area.

Because this information is not based on a comprehensive inventory, there may be species of concern or otherwise significant ecological communities in the area that are not represented in the database. The lack of data for any project area cannot be construed to mean that no significant features are present. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources.

The Department recommends that the project be accomplished with minimal impacts and that all efforts be made to ensure that critical habitats not be disturbed in the project area to help secure rare species conservation in North Dakota. Regarding any reclamation efforts, we recommend that any impacted areas be revegetated with species native to the project area.

We appreciate your commitment to rare plant, animal and ecological community conservation, management and inter-agency cooperation to date. For additional information please contact Kathy Duttonhefner (701-328-5370 or [kgduttonhefner@nd.gov](mailto:kgduttonhefner@nd.gov)) of our staff. Thank you for the opportunity to comment on this proposed project.

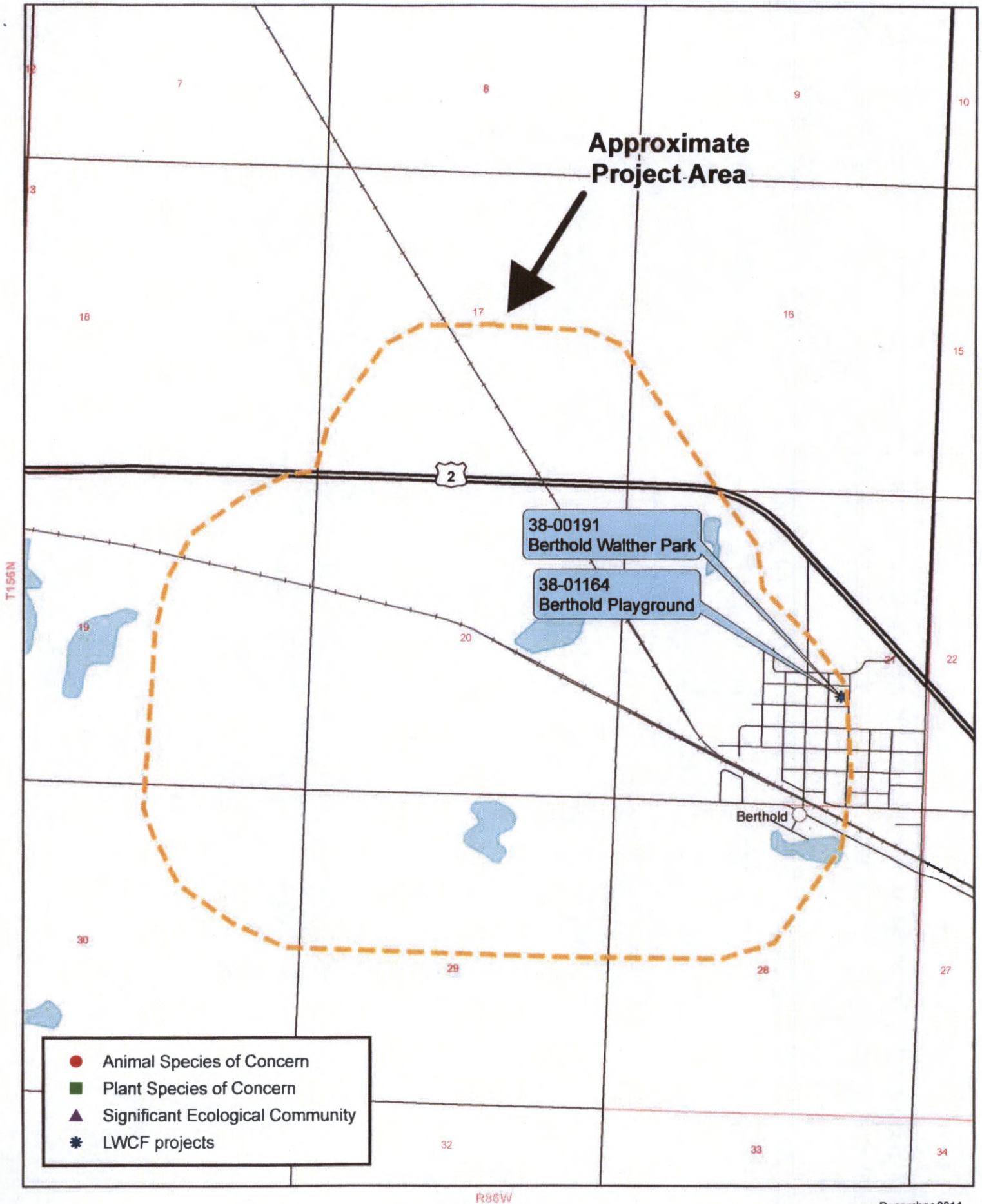
Sincerely,

  
Kathy Duttonhefner, Coordinator  
Natural Resources Division

R.USNDNHI\*2011-253 KD12/12/2011DL12/12/2011

• • • • •  
*Play in our backyard!*

North Dakota Parks and Recreation Department  
North Dakota Natural Heritage Inventory



**UPDATED LIST OF REQUIRED PERMITS**

**TABLE 1  
ROUTE PERMIT**

**Berthold Station Expansion Project  
Docket No. 11-232  
March 2012**

**Berthold Station Expansion Project PSC Supplemental Filing:**

*Updated Permit Status List (Table 1 of Route Permit Application)*

Since the PSC filing was made, the US Army Corps of Engineers (COE) – Omaha District responded to Enbridge’s request for Jurisdictional Determination on the Berthold South parcel. The COE responded on January 11, 2012 [see Exhibit D.2, filed as Supplemental] that none of the delineated features are within their jurisdiction. As such a permit from the COE will not be required for the Project, and the Section 404 permit listed in the original submittal to PSC has been removed from this table.

Table 1 – Updated List of Permits

<b>Permits/Requirements</b>	<b>Agency</b>	<b>Applicability</b>	<b>Anticipated Preparation/ Submittal Date</b>	<b>Anticipated Issuance/Completion Date</b>
Construction Stormwater Permit and Stormwater Pollution Prevention Plan (SWPPP)	North Dakota Department of Health (NDDH)	Required if the project will disturb five or more acres/SWPPP will be submitted to NDDH as part of application	March 2012	April 2012
Temporary Dewatering/Hydrostatic Discharge Permit	NDDH	Required to discharge hydrostatic test water	3 <sup>rd</sup> Quarter 2012	4 <sup>th</sup> Quarter 2012
Water Appropriation Permit	North Dakota State Water Commission	Required to appropriate hydrostatic test water	3 <sup>rd</sup> Quarter 2012	4 <sup>th</sup> Quarter 2012
Air Permit to Construct	NDDH	Required if the station modifications will increase the potential for air quality emissions	April 1, 2012	July 1, 2012
Spill Prevention, Control, and Countermeasures Plan Update	US Environmental Protection Agency	Plan updates required prior to operation	NA	1 <sup>st</sup> Quarter 2013