CROWLEY FLECK PLLP

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February 10, 2012

RECEIVED
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PUBLIC SERVICE COMMISSION

Hand Delivery

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

Dear Mr. Nitschke:

RE: Enbridge Pipelines (North Dakota) LLC
Grenora Pump Station Upgrades
Docket No. PU-11-605
Our File No. 31-411-006

Please find enclosed for filing the original and ten copies of the Supplemental Filing of Enbridge Pipelines (North Dakota) LLC's Application for a Certificate of Corridor Compatibility and Application for a Route Permit.

Please feel free to call should you have any questions.

Very truly yours,

Wade C. Mann

bw
Enc.
cc: Williams County Auditor

24 PU-11-605 Filed: 2/10/2012 Pages: 23
Supplemental filing to application for a certificate of corridor compatibility and route permit
Enbridge Pipelines (North Dakota) LLC

ENBRIDGE™

NORTH DAKOTA PUBLIC SERVICE COMMISSION

SUPPLEMENTAL FILING OF

ENBRIDGE PIPELINES (NORTH DAKOTA) LLC

Docket No. PU-11-605

Application for a Certificate of Corridor Compatibility

And

Application for a Route Permit

Grenora Station Upgrade Project
February 2012

Enbridge Pipelines (North Dakota) LLC
Supplemental Filing
February 2012
Docket No. PU-11-605

ENBRIDGE™

GRENORA STATION UPGRADE PROJECT
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Table 1 – Route Permit	Updated List of Other Required Permits

EXHIBIT D.2

SUPPLEMENTAL FILING
TO
APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY
AND
ROUTE PERMIT

Grenora Station Upgrade Project
Docket No. 11-605
February 2012

Grenora PSC Supplemental Filing:

Exhibit D.2 – Approved Corps Jurisdictional Determination

In September 2011, 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 eight field-delineated wetland features described in previously filed Exhibit D.1 on behalf of Enbridge Pipelines (North Dakota) LLC.

The COE responded to the Jurisdictional Determination Request on October 25, 2011, 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.

Exhibit D.2

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

October 25, 2011

[NWO-2011-1842-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, LLC (Enbridge), on 8 wetlands, located near the town of Grenora, North Dakota. Enbridge is proposing to expand its existing Grenora Station within an approximate 152-acre parcel of land that it owns. This proposed expansion project is located in the NE¼ of Section 14, Township 159 North, Range 103 West, Williams 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 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.

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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-2011-1842-BIS.

Sincerely,

Daniel E. Cimarosti

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): 20 October 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District; Merjent / Enbridge; NWO-2011-1842-BIS.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **North Dakota.** County/parish/borough: **Mountrail County.** City: **New Town.**

Center coordinates of site (lat/long in degree decimal format): Lat. **48.602132** Long. **-103.955879 – wetland 1**
Lat. **48.599854** Long. **-102.954130 – wetland 2**
Lat. **48.598050** Long. **-103.954660 – wetland 3**
Lat. **48.597852** Long. **-103.956906 – wetland 4**
Lat. **48.597906** Long. **-103.958896 – wetland 5**
Lat. **48.603471** Long. **-103.959967 – wetland 6**
Lat. **48.599954** Long. **-103.951427 – wetland 7**
Lat. **48.599412** Long. **-103.950804 – wetland 8**

Name of nearest waterbody: **Missouri River.**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None.**

Name of watershed or Hydrologic Unit Code (HUC): **Big Muddy - 10060006.**

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

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

☒ Office (Desk) Determination. Date: **September 27, 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):** [1]
   - ☐ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (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):

---

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.

[2] 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).

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   - ☒ Potentially jurisdictinal waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **These are 8 isolated wetland 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.
  - ☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds:
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☒ Wetlands: **8 wetlands with a total estimated size 12.5-acres.**

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds:
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☒ Wetlands: **8 wetlands.**

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **Grenora - 1:24,000.**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☒ National wetlands inventory map(s). Cite name: **Grenora - 1:24,000.**

[3] Supporting documentation is presented in Section III.F.

- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☒ Aerial (Name & Date):.
  or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify):**Google Earth Pro.**.

B. ADDITIONAL COMMENTS TO SUPPORT JD: See attached aerial maps/photos.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Enbridge Pipeline, LLC.		File Number: 2011-1842-BIS	Date: 10/25/11
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to 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.

- OBJECT: If you object to the permit (Standard or 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. 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. 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 or appeal the approved JD or provide new information.

- 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. This form must be received by the division engineer 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 - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

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.)

ADDITIONAL INFORMATION: The appeal 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 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:	If you only have questions regarding the appeal process you may also contact: US Army Corps of Engineers, Northwestern Division Attn: David Gesl, Appeal Review Officer 1125 NW Couch Street Portland, OR 97208-2870 Telephone (503) 808-3825 David.W.Gesl@usace.army.mil

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.

_____ Signature of appellant or agent.	Date:	Telephone number:

EXHIBIT F.1

SUPPLEMENTAL FILING
TO
APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY
AND
ROUTE PERMIT

Grenora Station Upgrade Project
Docket No. 11-605
February 2012

Grenora PSC Supplemental Filing:

Exhibit F.1 – FWS response letter and EPNDs response

EPND submitted a consultation letter and accompanying Wetland Delineation and Habitat Assessment (previously filed Exhibit D.1) to the U.S. Fish and Wildlife Service (FWS) on September 21, 2011 seeking review of the project for concerns related to federally listed threatened and endangered species and critical habitat. The FWS responded in a letter dated November 4, 2011 (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:

1) Project Schedule – Enbridge's original letter to the FWS stated that project activities were proposed to begin in spring 2011; however, that was a typographical error and should have read spring 2012. FWS correctly noted this in their response letter.

2) Federal Nexus – Enbridge's original letter to the FWS assumed that the project may impact U.S. Army Corps of Engineers (COE) jurisdictional wetlands, therefore, 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 that would be impacted by the project are COE jurisdictional (per COE Jurisdictional Determination issued on October 25, 2011; see previously filed Exhibit D.2). Therefore, because there are no other federal permits required, there is no federal nexus for the proposed project.

3) Impacts to Wetlands and Whooping Crane Habitat – The FWS recommends that Enbridge take steps to avoid the wetlands on the proposed site and to mitigate for any wetland losses that occur as a result of the proposed project to ensure that the proposed project does not result in a new loss of habitat for the endangered whooping crane.

   During project planning and engineering, Enbridge was intentional in the siting of each component of the expansion area to avoid impacts to wetlands and waterbodies to the greatest extent practicable. The only portion of the facility expansion that will be located within wetlands/waterbodies is an access road which will impact a total of 0.02 acres of an intermittent drainage feature. The access road was specifically sited to minimize impacts to the greatest extent practicable, while maintaining a safe turning lane off of County Road 5. An appropriately sized culvert will be installed beneath the access road to preserve the hydrology of the drainage feature. Enbridge is currently in consultation with Williams County officials regarding proper sizing and design of the culvert to comply with state stream crossing regulations (NDAC 89-14-01).

   Enbridge will install and maintain appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels. As detailed in Section B.9.e.(1) of the Route Permit, Enbridge will obtain coverage for construction stormwater under the North Dakota Department of Health's General Construction Stormwater permit (NDR10-0000), which requires the development of a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP is a comprehensive document that details project activities and best management practices for erosion and sediment control. Enbridge does not propose any further wetland mitigation at this time.

Although the project area does contain suitable habitat for migrating whooping cranes, given the minimal amount of wetland impact, the existing structures, human activity/roadways near the proposed project site, and the available feeding and roosting habitat adjacent to the expansion site, Enbridge believes that use of this area by whooping cranes would be an unlikely occurrence, and that the birds would preferentially avoid the construction area during flight and choose to stop elsewhere during migration. As detailed in Section B.3.1.(a), Enbridge will suspend construction and contact FWS if a whooping crane is sighted within one-mile of construction activities.

4) Sprague's Pipit – In its response letter the FWS agrees that the project will not directly impact native prairie, which is the Sprague's pipit's preferred habitat, but notes that the project area is located adjacent to a relatively large tract of native prairie (west of the project area) and that some Sprague's pipit individuals may be displaced that would otherwise nest near the proposed project. Sprague's pipit is currently listed as a "candidate species" with no statutory protection under the Endangered Species Act.

   In addition, the FWS notes that the cumulative effects of all of Enbridge's projects in North Dakota may have a significant impact on the Sprague's pipit and provides information on Candidate Conservation Agreement with Assurances (CCAA), which is a voluntary program the Service has implemented to remove or reduce threats to candidate species.

   For the purposes of consultation under the Endangered Species Act, the definition of cumulative effects is as follows:

   > *"the effects of future State or private activities not involving Federal activities that are reasonably certain to occur within the action area of an action subject to consultation."*

   The Sprague's pipit prefers habitat that is physically separated from anthropogenic features, such as roads, transmission poles and lines, existing structures, and tends to avoid habitat edges. Enbridge maintains that the proposed project will not directly or indirectly impact the Sprague's pipit or its habitat and does not believe the proposed activity will contribute to the effects of future State or private activities on Sprague's pipit habitat within the action area given:

   a. the dominance of actively cultivated lands (lack of suitable habitat) in the immediate project area;
   b. the existing county roads, facility structures, and intermittent human activity in the vicinity of the project area;
   c. the habitat transition that exists between the native prairie tract west of the project area and the actively cultivated land that the proposed project will be constructed on, creating a "habitat edge" that the pipit would likely avoid;
   d. no Sprague's pipit individuals were observed in the area during on-site field surveys.

   Enbridge appreciates the information provided by the FWS on CCAA and will consider this program during future project planning in North Dakota.

5) Migratory Birds – The FWS recommends that the project proponent implement all practicable measures to avoid all take during the breeding season or at any other time which may result in the take of migratory birds, their eggs, or active nests.

   FWS recommends that if construction is to occur during the migratory bird breeding season (February 1 – June 15), that Enbridge mow, grub and/or clear the area prior to the start of the breeding season. The project site was planted in wheat in 2011 and harvested in fall. As there are no plans to reseed the area prior to the initiation of construction activities, the project area is effectively clear of ground vegetation in accordance with the FWS' recommendation.

Exhibit F.1

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501

NOV - 4 2011

Ms. Sara Ploetz
Environmental Analyst II
Enbridge Pipelines (North Dakota) LLC
1409 Hammond Avenue
Superior, Wisconsin 54880

Re: Enbridge Pipelines (North Dakota) LLC
Grenora Expansion Project
Williams County, ND

Dear Ms. Ploetz:

The U.S. Fish and Wildlife Service (Service) has reviewed a proposal to expand Enbridge Pipelines' (North Dakota) LLC (Enbridge) existing Grenora Pumping Station, described in a letter dated September 21, 2011, and accompanying *Wetland Delineation and Habitat Assessment Report*, dated September 2, 2011. The proposed project would involve construction of a new 40,000 barrel (bbl) tank, a Lease Automatic Custody Transfer (LACT) area to accommodate eight truck unloading units (280' X 150' each), and the installation of a 10-inch diameter pipeline from the pumping station manifold to the LACT area. The letter states that work is proposed to begin in spring, 2011; we assume this is intended to read spring, 2012. The proposed project comes under the authority of the North Dakota Public Service Commission (PSC). The letter states that the proposed project will impact jurisdictional wetlands and will thus require a permit from the U.S. Army Corps of Engineers (Corps). However, the Corps has informed us in an e-mail dated October 28, 2011, that none of the wetlands that would be impacted by the proposed project are jurisdictional.

The project is located at: T.159 N., R.103 E., Sec 11, 12, 13, 14

We offer the following comments under the authority of and in accordance with the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). Since the Corps does not claim jurisdiction on any of the wetlands, there is no Federal nexus for this project. (A Federal nexus exists whenever an activity is conducted, funded, or licensed or permitted by a Federal agency). However, these laws still apply. The following comments are designed to help Enbridge implement the proposed projects so that compliance with these laws is maximized.

Threatened, Endangered and Candidate Species

From our analysis of the proposed project, it does not appear that it will result in adverse effects to listed or candidate species, due to the small area being impacted and the disturbed nature of the upland habitat. However, as discussed below, we do recommend that Enbridge take steps to avoid the wetlands on the proposed site, and to mitigate for any wetland losses that occur as a result of the proposed project to ensure that the proposed project does not result in a net loss of habitat for the endangered whooping crane. Bear in mind that it is Enbridge's responsibility to make your own effects analysis and to avoid all unauthorized take of federally-listed species.

The *Wetland Delineation and Habitat Assessment Report* identifies several wetlands in the proposed project area. Wetlands such as these serve as important stopover sites for a variety of migratory birds, including the federally endangered whooping crane. The Aransas Wood Buffalo Population (AWBP) of the endangered whooping crane is the only self-sustaining migratory population of whooping cranes remaining in the wild, and there are only about 280 individuals remaining. 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. They make numerous stops along their migration route to feed and roost before moving on.

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 proposed project lies in the primary migration corridor, where 95 percent of the migrating whooping cranes have been sighted. A desktop analysis of the wetlands to be filled suggests that they may represent suitable stopover locations that may be used by migrating whooping cranes.

In addition to providing nesting, foraging, and roosting habitat for wildlife, wetlands serve a valuable function in the landscape by retaining water, thus reducing the risk of flooding and serving as groundwater recharge sites. These ecological services also benefit the human communities nearby.

The Service recommends that the proposed project be designed to avoid all wetlands, including non-jurisdictional wetlands to the extent practicable. If avoidance is not practicable, we recommend that Enbridge mitigate for those wetlands which cannot be avoided with functionally- equivalent wetlands.

While this particular project does not directly impact native prairie, it is located adjacent to a relatively large tract of native prairie just to the west, and the proposed project may displace some Sprague's pipit individuals that would otherwise nest near the proposed project. Additionally, the cumulative effects of all of Enbridge's projects in North Dakota may have a

significant impact on the Sprague's pipit. For candidate species such as the Sprague's pipit, non-Federal applicants have the ability to take advantage of the additional management flexibility afforded to candidate species by developing a Candidate Conservation Agreement with Assurances (CCAA). These 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. These agreements are sometimes so successful that listing the species proved to be unnecessary. The Service would be happy to work with Enbridge to develop CCAA that includes your actions in North Dakota that would affect candidate species such as the Sprague's pipit.

Migratory Birds

The MBTA 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 project construction and operation 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. Companies 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 the extent practicable, schedule construction for late summer or fall/early winter so as not to disrupt migratory birds during the breeding season (February 1 to July 15). The letter indicates that the proposed work will take place in the spring, when the potential to impact migratory birds is high. The Service recommends that the project proponent implement all practicable measures to avoid all take during the breeding season or at any other time which may result in the take of migratory birds, their eggs, or active nests. This may include the following: mowing, grubbing, and clearing the area prior to the start of the migratory bird breeding season to make it unsuitable for nesting birds and maintaining it in this condition throughout the nesting season; 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 with the intent of avoiding take, that you maintain any documentation of the presence of 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 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 migratory bird populations.

Bald and Golden Eagles

The BGEPA prohibits anyone without a permit issued by the Secretary of the Interior from taking bald eagles, including their parts, nests, or eggs. The Act provides criminal and civil penalties for persons who take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald or golden, alive or dead, or any part, nest, or egg thereof. The Act defines take as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. "Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagles return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

The *Wetland Delineation and Habitat Assessment Report* states that no raptors or raptor nests were observed during the habitat assessment. The nearest wooded habitat that raptors might use is a shelterbelt surrounding an active farmstead approximately 0.45 miles from the existing Grenora facility.

High-Value Habitat Avoidance

Avoid construction in native prairie, if possible, and reseed disturbed native prairie with a comparable native grass/forb seed mixture. The Service recommends planting a diverse mixture of native cool and warm season grasses and forbs. Recent research has suggested that a more diverse mix, including numerous forb species, is not only ecologically beneficial but is also more weed resistant, allowing for less intensive management and chemical use. In essence, the more species included in a mixture, the higher the probability of providing competition to resist invasion by non-native plants. The seed source should be as local as possible, preferably collected from the nearby native prairie. Obtain seed stock from nurseries within 250 miles of the project area to ensure the particular cultivars are well adapted to the local climate. The Natural Resources Conservation Service (NRCS) compiles a list of vendors in North Dakota that supply conservation seed and plants (http://www.plant-materials.nrcs.usda.gov/pubs/ndpmcmt8152.pdf). Additional information on native grasses and

forbs may be found at the NRCS Bismarck Plant Materials Center (http://www.plant-materials.nrcs.usda.gov/ndpmc/).

- Make no stream channel alterations or changes in drainage patterns.
- Locate construction to avoid placement of fill in wetlands in the project area.
- 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. If additional information is required, please contact Carol Aron of my staff at (701) 250-4481 or at the letterhead address.

Sincerely,

Jeffrey K. Towner

Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures

cc: Public Service Commission
Regulatory Office, Army Corps of Engineers, Bismarck
(Attn: J. Renschler)

UPDATED LIST OF REQUIRED PERMITS

TABLE 1
ROUTE PERMIT

Genora Station Upgrade Project
Docket No. 11-605
February 2012

Grenora 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 EPND's request for Jurisdictional Determination. The Corps responded on October 25, 2011 [see Exhibit D.2, filed as Supplemental] that none of the delineated features are within their jurisdiction. As such a permit from the Corps will not be required for the Project.

Table 1 – Updated List of Permits

Permits/ Requirements	Agency	Applicability	Anticipated Preparation/ Submittal Date	Anticipated Issuance/Completion Date
NDPDES Construction Storm Water Permit and Storm Water Pollution Prevention	North Dakota Department of Health	Required if the Project will disturb five or more acres.	April 1, 2012	April 8, 2012
Water Appropriation Permit (Temporary Water Permit)	North Dakota State Water Commission	Required to appropriate hydrostatic test water.	April 1, 2012	May 1, 2012
NDPDES Temporary Dewatering/ Hydrostatic Discharge Permit	North Dakota Department of Health	Required to discharge hydrostatic test water.	April 1, 2012	May 1, 2012
Air Permit to Construct Amendment	North Dakota Department of Health	Required if the station modifications will increase the potential for air quality emissions.	February 6, 2011	April 1, 2012
Spill Prevention, Containment, and Countermeasures Plan Update	Environmental Protection Agency	Plan updates required prior to construction and operation.	October 2012	December 2012