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February 10, 2012

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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
Little Muddy Station Connection Project
Docket No. PU-11-606
Our File No. 31-411-07

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



NORTH DAKOTA PUBLIC SERVICE COMMISSION

**SUPPLEMENTAL FILING OF
ENBRIDGE PIPELINES (NORTH DAKOTA) LLC
Docket No. PU-11-606
Application for a Certificate of Corridor Compatibility
And
Application for a Route Permit**

**LITTLE MUDDY STATION CONNECTION PROJECT
February 2012**



LITTLE MUDDY STATION CONNECTION PROJECT
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EXHIBIT D.2
SUPPLEMENTAL FILING
TO
APPLICATION FOR CERTIFICATE OF CORRIDOR COMPATIBILITY
AND
ROUTE PERMIT

LITTLE MUDDY STATION CONNECTION PROJECT
Docket No. 11-606
February 2012

Little Muddy PSC Supplemental Filing:

Exhibit D.2 – Approved Corps Jurisdictional Determination

In October 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 nineteen (19) 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 December 13, 2011, concluding that the delineated features 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 12TH STREET
BISMARCK ND 58504-6640
December 13, 2011

[NWO-2011-2264-BIS]
Renschler/255-0015

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 19 wetlands, located near the town of Epping, North Dakota. Enbridge is proposing to construct approximately 6 miles of 10-inch diameter pipeline and a new station, referenced in your request as the Little Muddy Station Connection Project. This proposed pipeline project is located within several Sections, Township 156 North, Range 100 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 pipeline 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-2011-2264-BIS.

Sincerely,



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): 7 December 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District; Merjent / Enbridge; NWO-2011-2264-BIS.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: North Dakota. County/parish/borough: Williams County. City: Epping.
Center coordinates of site (lat/long in degree decimal format):

Lat. <u>48.337013</u>	Long. <u>-103.567333 - #1</u>
Lat. <u>48.332300</u>	Long. <u>-103.562050 - #2</u>
Lat. <u>48.328280</u>	Long. <u>-103.562318 - #3</u>
Lat. <u>48.327583</u>	Long. <u>-103.562316 - #4</u>
Lat. <u>48.327913</u>	Long. <u>-103.564618 - #5</u>
Lat. <u>48.327105</u>	Long. <u>-103.557927 - #6</u>
Lat. <u>48.312185</u>	Long. <u>-103.527024 - #7</u>
Lat. <u>48.307053</u>	Long. <u>-103.517563 - #8</u>
Lat. <u>48.300108</u>	Long. <u>-103.505368 - #9</u>
Lat. <u>48.287894</u>	Long. <u>-103.486049 - #10</u>
Lat. <u>48.286926</u>	Long. <u>-103.482281 - #11</u>
Lat. <u>48.289095</u>	Long. <u>-103.486133 - #12</u>
Lat. <u>48.339889</u>	Long. <u>-103.564900 - #13</u>
Lat. <u>48.316249</u>	Long. <u>-103.518285 - #14</u>
Lat. <u>48.326639</u>	Long. <u>-103.518022 - #15</u>
Lat. <u>48.312254</u>	Long. <u>-103.526806 - #16</u>
Lat. <u>48.300131</u>	Long. <u>-103.505264 - #17</u>
Lat. <u>48.310271</u>	Long. <u>-103.524128 - #18</u>
Lat. <u>48.309119</u>	Long. <u>-103.520974 - #19</u>

Name of nearest waterbody: Little Muddy River/Missouri River.

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

Name of watershed or Hydrologic Unit Code (HUC): Little Muddy - 10110102.

- 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 ID form.

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

- Office (Desk) Determination. Date: November 18, 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 waters² (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

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).

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):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **These are 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 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: **19 wetlands with a total estimated size 40-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: **19 wetland-features.**

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:

³ Supporting documentation is presented in Section III.F.

- 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: Blacktail Lake SE - 1:24,000.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: Blacktail Lake SE - 1:24,000.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic 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.

UPDATED LIST OF REQUIRED PERMITS

**TABLE 10
ROUTE PERMIT**

**Little Muddy Station Connection Project
Docket No. 11-606
February 2012**

Little Muddy PSC Supplemental Filing:

Updated Permit Status List (Table 10 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 December 13, 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 10 – Updated List of Permits

Table 10	
Status of Environmental Permits	
Permit/Authorization	Status of Permit/Authorization
FEDERAL	
1. North Dakota State Historic Preservation Office (NDSHPO) National Historic Preservation Act (NHPA), Section 106 Compliance	EPND has completed cultural surveys on the proposed route and has consulted with the NDSHPO. In a November 1, 2011 response, NDSHPO concurred with a “No Historic Properties Affected” determination.
2. US Fish and Wildlife Service Agency (USFWS) – Endangered Species Act Section 7 Compliance	Consultation initiated September 2011. A response has not yet been received.
3. USFWS - Wetland and Grassland Easements	Consultation initiated September 2011. A response has not yet been received.
STATE	
1. NDDH - Air Quality Permit to Construct	Anticipated submittal: February 15 2012 Anticipated issuance: April 2012
2. NDDH – Air Quality Permit to Operate	Anticipated submittal: 3rd Quarter 2012 Anticipated issuance: 4th Quarter 2012
3. NDDH - Construction Stormwater and Temporary Dewatering General Permit (NDR10-0000) and Stormwater Pollution Prevention Plan (SWPPP)	Anticipated submittal: March 2012 Anticipated issuance: April 2012
4. NDDH - Hydrostatic Discharge Permit (General Permit NDG-070000)	Anticipated submittal: 3 rd Quarter 2012 Anticipated issuance: 4 th Quarter 2012
5. North Dakota Game and Fish (NDGF) – State-Protected Species and Critical Habitat Review	Consultation initiated September 2011. Response Received: October 24, 2011
6. North Dakota State Water Commission (NDSWC) - Temporary Water Permit/Water Withdrawal Permit	Anticipated submittal: 3 rd Quarter 2012 Anticipated issuance: 4 th Quarter 2012