

## DECISION MEMORANDUM FOR THE REGIONAL DIRECTOR

DATE: October 6, 2015  
FROM: Scott Hicks, East Lansing Field Office Project Leader *SH*  
SUBJECT: Damage Assessment Restoration Plan, Environmental Assessment for  
Enbridge Line 6B Oil Discharges near Marshall, MI (DARP/EA)

### Introduction

The East Lansing Field Office requests concurrence from the Regional Director regarding finalizing the DARP/EA following public comment on the draft document.

### Background

On July 25, 2010, Lakehead Line 6B (Line 6B), a 30-inch diameter pipeline owned and/or operated by Enbridge, ruptured near Marshall, Michigan, and began discharging crude oil into a wetland adjacent to Talmadge Creek. The oil flowed through Talmadge Creek into the Kalamazoo River, a Lake Michigan tributary, down the river and into its floodplain for approximately 38 miles, to Morrow Lake. Aquatic and floodplain habitats were oiled as were birds, mammals, turtles and other wildlife. The river was closed to the public for the remainder of 2010 and all of 2011, reopened by sections during 2012, and some sections were closed again in 2013 and 2014 for additional dredging of submerged oil.

### The Issue

The DARP/EA was written by U.S. Fish and Wildlife Service, Nottawaseppi Huron Band of the Potawatomi Tribe, and Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians in coordination with the National Oceanic and Atmospheric Administration, Michigan Department of Natural Resources, Michigan Department of Environmental Quality, and Michigan Department of the Attorney General, collectively acting as Trustees for the restoration of natural resources and public use services that were exposed and/or injured by the Enbridge Line 6B Oil Discharges. The DARP/EA addresses the Trustees' authorities and responsibilities under the Oil Pollution Act (33 U.S.C. § 2701, et seq.) and the National Environmental Policy Act, as amended, 42 U.S.C. § 4321 et seq. A draft of this DARP/EA was released to the public for comment from June 12, 2012 through July 27, 2015. The Trustees announced the availability of the Draft DARP/EA through a Federal Register Notice of Availability, press releases resulting in more than 12 articles in established media outlets, publication on the Great Lakes Information Network, posting on the USFWS's webpage for this case and through USFWS social media, and through direct outreach to interested parties including the Kalamazoo River Watershed Council and MDEQ's Cooperating & Assisting Agencies. The Trustees received 35 comments on the Draft DARP/EA, updated some information on a non-selected project in the DARP/EA as a result, and prepared a responsiveness summary as Appendix J of the Final DARP/EA.

### Analysis and Position of Interested Parties

The Trustees evaluated a range of restoration alternatives to provide resource services to compensate the public for losses pending natural recovery of resources exposed/ or injured by the Enbridge Line 6B Oil Discharges. The Trustees have selected restoration alternatives that include projects that provide for wetland and floodplain restoration, upland habitat enhancements, dam removal, culvert replacements, lake fisheries habitat improvements, projects to specifically benefit significantly impacted species, wild rice restoration, and projects to improve natural resource use by the general public and tribal members. Some types of restoration are being achieved through restoration projects implemented in accordance with requirements of Michigan law, under the direction of the State of Michigan in consultation with Trustees, and some recreational use projects that Enbridge has completed in the area affected by the Enbridge Line 6B Oil Discharges.

The consent decree that provides funding from Enbridge for the alternatives selected in the Final DARP/EA was lodged with the United States District Court for the Western District of Michigan on June 8, 2015. The United States did not receive any comments on the proposed consent decree during the public comment period, which ended on July 13, 2015. Once signed, this Final DARP/EA will be attached to the Department of Justice's memorandum in support of the motion to enter that consent decree.

### **Recommendation**

It is the recommendation of the East Lansing Field Office that the Authorized Official approve the finalization of the Damage Assessment and Restoration Plan so that we can proceed, with our co-trustees, to obtain the funding through the consent decree and implement the selected restoration projects. This includes approval through this decision memorandum and the "NEPA Decision Document/Finding of No Significant Impact (FONSI) for the Damage Assessment and Restoration Plan/ Environmental Assessment for the July 25-26, 2010 Enbridge Line 6B Oil Discharges near Marshall, Michigan."

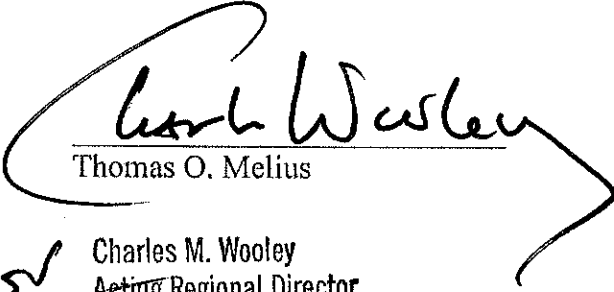
REGIONAL DIRECTOR'S DECISION


APPROVE

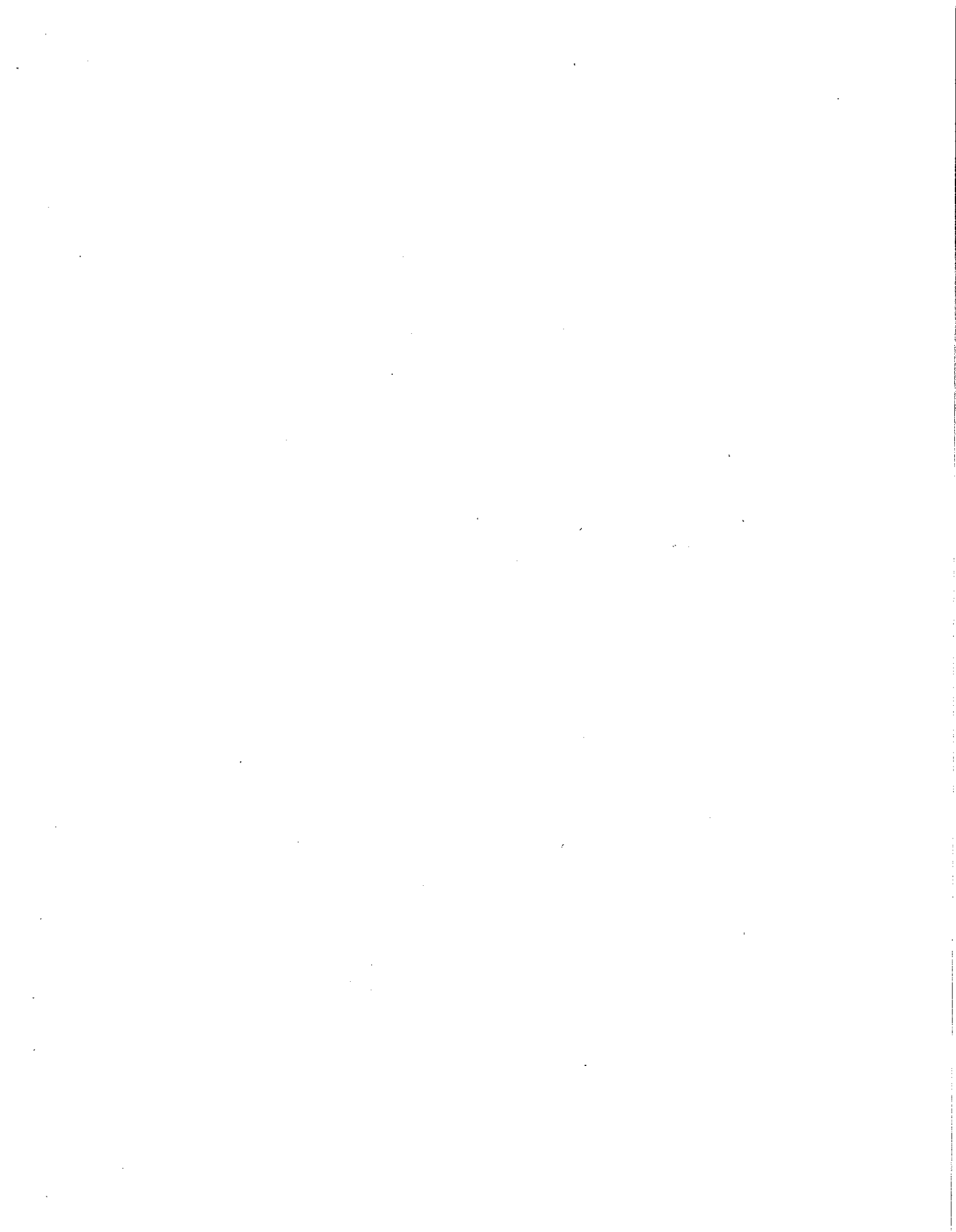
DISAPPROVE

DISCUSS

DATE 10 / 20 / 15

  
Thomas O. Melius

 Charles M. Wooley  
Acting Regional Director



**NEPA Decision Document/Finding of No Significant Impact (FONSI)  
for the Damage Assessment and Restoration Plan/ Environmental Assessment  
for the July 25-26, 2010 Enbridge Line 6B Oil Discharges near Marshall, Michigan**

**PREFERRED ALTERNATIVE**

The Final Damage Assessment and Restoration Plan/Environmental Assessment (Final DARP/EA) has been prepared by U.S. Fish and Wildlife Service, Nottawaseppi Huron Band of the Potawatomi Tribe, and Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians in coordination with the National Oceanic and Atmospheric Administration, Michigan Department of Natural Resources, Michigan Department of Environmental Quality, and Michigan Department of the Attorney General, collectively acting as Trustees for the restoration of natural resources and public use services that were exposed and/or injured by the Enbridge Line 6B Oil Discharges. This Final DARP/EA is issued to inform the public concerning the Trustees' authorities and responsibilities under the Oil Pollution Act (33 U.S.C. § 2701, et seq.) and the National Environmental Policy Act, as amended, 42 U.S.C. § 4321 et seq.

The Trustees evaluated a range of restoration alternatives which would provide resource services to compensate the public for losses pending natural recovery of resources exposed or injured by the Enbridge Line 6B Oil Discharges. The Trustees have selected restoration alternatives, including projects that provide for wetland and floodplain restoration, upland habitat enhancements, dam removal, culvert replacements, lake fisheries habitat improvements, projects to specifically benefit significantly impacted species, wild rice restoration, and projects to improve natural resource use by the general public and tribal members.

The restoration alternatives that will be implemented under the joint direction and control of all Trustees and are the subject of this National Environmental Policy Act determination are the following: three projects to improve aquatic connectivity and water quality in Rice Creek and Pigeon Creek, tributaries to the Kalamazoo River that join it near Marshall, Michigan and Talmadge Creek, by replacing undersized and perched culverts and lowering a berm to connect the creek and its floodplain; funding to improve the fishery in at least two lakes within the Fort Custer State Recreation Area by controlling invasive species for at least 3 years; funding to restore 175 acres of oak savanna uplands in the Fort Custer State Recreation Area; a project to improve and monitor turtle reproduction in the impacted section of the Kalamazoo River; and a project to restore wild rice in at least two locations in the Kalamazoo River.

**FINDING OF NO SIGNIFICANT IMPACT**

For the reasons briefly presented below and based on an evaluation of the information contained in the supporting references enumerated below, I have determined that restoring, replacing and/or acquiring the equivalent of the injured resources within the Kalamazoo River watershed using restoration as described under Sections 4.4 – 4.8 of the Damage Assessment and Restoration Plan/Environmental Assessment for the July 25-26, 2010 Enbridge Line 6B Oil

Discharges near Marshall, Michigan (DARP and EA) is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, an Environmental Impact Statement will not be prepared.

Reasons:

1. Federally listed endangered, threatened, and candidate species in the counties in which the preferred projects will occur, Calhoun and Kalamazoo, support the following Federally-listed species: Indiana bat (endangered), northern long-eared bat (threatened), Eastern massasauga rattlesnake (proposed), Northern copperbelly watersnake (threatened), and Mitchell's satyr butterfly (endangered). The projects described in the Preferred Alternatives are not likely to adversely affect these species based on the following: For Indiana bat and northern long-eared bat, all proposed aquatic habitat restoration work would be conducted from existing access roads, so no potential maternity roost trees would be felled. These species of bats may benefit from improvements in riparian corridor habitats and increased prey availability once restorations are completed. The upland oak savanna restoration project would include removal of early successional shrubs and small trees that would not be suitable maternity roost trees. Nonetheless, this project area would be surveyed for potential roost trees and any found would either not be cut as part of the project or would be cut during the winter when bats are not present. For Eastern massasauga rattlesnake and Northern copperbelly water snake, the restoration work along Pigeon and Rice Creeks and the wild rice restoration projects might occur within suitable habitats, but only the Van Sickle berm lowering project would be conducted with heavy equipment operating in potential habitat rather than from existing roads or manually, with workers and volunteers. The Trustees will work with the project sponsor, Calhoun County Conservations District to ensure that the area of the berm lowering is surveyed for snakes prior to construction and that workers and volunteers on all projects understand the value of any snakes found during the project and report any sightings to the Service. The snake species may benefit from improvements in riparian corridor habitats and increased habitat and prey availability once restorations are completed. Mitchell's satyr butterflies are dependent on fen habitats. Because the restoration projects do not include such areas of suitable habitat, these projects will not affect this species.
2. Implementation of certain restoration projects in the preferred alternative may result in temporary and localized adverse impacts due to erosion, turbidity and sedimentation related to construction activities. However, the use of best management practices along with other avoidance and mitigation measures required by the regulatory

agencies would be employed to minimize any adverse water quality and sedimentation impacts. For example, silt fences or coffer dams would be used whenever it is determined that restoration work might increase erosion and turbidity. The selection and application rates for herbicide use for invasive species control will be designed to maximize control of the invasive species and minimize harm to native vegetation, but some short-term harm to native aquatic plant species may occur. Also, the decay of the invasive plant species may cause some short-term reductions in dissolved oxygen in the water and odors on and near the lake.

3. There may be temporary and localized adverse visual impacts during implementation of the preferred restoration projects associated with construction activities. Once the projects are completed, however, users of these areas are expected to perceive the project areas as having improved aesthetics.
4. Public access could be temporarily restricted during proposed construction activities, but since the preferred projects are not located in heavily used recreation areas, any adverse effects would be minimal. In addition, implementation time for these projects would be relatively short and any negative impact on recreational activities would be slight and temporary. Restoration would likely not restrict future development.
5. Because the proposed projects occur in a river or stream, do not newly disturb soils, or occur in existing road right-of-ways, the Trustees do not believe that there are any known archaeological sites or sites of cultural significance present. The Trustees will work with project managers during the permitting process to ensure that they consult with the State Office of Archeology and Historical Preservation (SHPO) to confirm that there are no known sites within the project area. If sites are discovered, the Trustees will work with the project manager to redesign projects so as to minimize or not adversely affect any known archaeological sites or sites of cultural significance, or a similar project in a different location in the watershed will be substituted. The wild rice restoration project is expected to provide additional cultural uses of the area by tribal members.
6. No significant adverse effects are anticipated to soil, geologic conditions, energy consumption, wetlands, or floodplains. The selected restoration projects would have no adverse social or economic impacts on local neighborhoods or communities. The Trustees expect that all of these projects will provide ecological benefits and some will also improve recreational use for swimming, boating, fishing, hunting, and wildlife observation, in addition to increasing gathering of plants and other cultural uses by

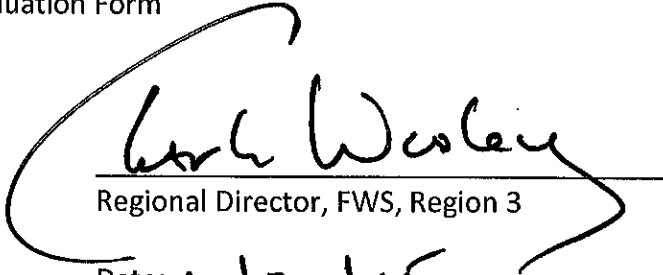
tribal members. The improved road stream crossings are expected to improve local transportation and locally decrease long-term road maintenance costs.

7. As the proposed preferred projects are intended to achieve recovery of injured natural resources, the cumulative environmental consequences will be largely beneficial for birds and wildlife habitat. All the anticipated adverse impacts would be short-term and localized, would occur during project construction, and would be minimized by using mitigation described in the DARP and EA. Any unanticipated negative cumulative adverse effect identified prior to project implementation would result in reconsideration of the project by the Trustees.
8. Overall, proposed preferred projects will result in a long-term net improvement in fish and wildlife habitat, the restoration of ecological balance in areas where human-caused disturbances have led to adverse impacts on sensitive native species, and improvement in the human use and non-use services provided by fish and wildlife in the region. The culvert removal and berm lowering projects on Pigeon and Rice Creek are far enough apart from each other that no cumulative effects of disturbance or turbidity during construction are expected. Local effects will be minimized by silt fencing and other erosion control techniques. The other projects are different enough in kind and location that no cumulative adverse effects are anticipated. The permit process required for this and similar work in streams, rivers, floodplains, and wetlands will also ensure that these projects are reviewed in the context of any similar projects that might be implemented in the area, including those by county conservation districts, drain or road commissioners, Michigan Department of Transportation, developers, or others.
9. Any active habitat restoration or land transactions will be conducted with willing landowners and will not displace or negatively affect any underserved, minority, or low-income populations. The overall quality of life for the surrounding communities will improve somewhat with these restoration alternatives, through increased economic and recreational opportunities, especially through improved opportunities for fishing and wildlife viewing in creek, river and lake settings in Calhoun and Kalamazoo Counties. The cumulative impact of these projects on tribal members is expected to be positive with an increase in wild rice and other natural resources as well as in knowledge and opportunities for using and enjoying these resources.
10. Public review comments regarding the Draft DARP and EA (May 2015) indicate broad general acceptance and approval of the proposed action (Appendices J and K of the Final DARP and EA).



Supporting References:

1. Final Damage Assessment and Restoration Plan/Environmental Assessment for the July 25-26, 2010 Enbridge Line 6B Oil Discharges near Marshall, Michigan.
2. Draft Damage Assessment and Restoration Plan/Environmental Assessment for the July 25-26, 2010 Enbridge Line 6B Oil Discharges near Marshall, Michigan. [available at <http://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/>]
3. Intra-Service Section 7 Biological Evaluation Form



Regional Director, FWS, Region 3

Date: 10/20/15  
Charles M. Wooley  
Acting Regional Director

Distribution:  
Wash., DC (QEC)  
State Clearinghouse

