

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

**UNITED STATES OF AMERICA, *et al.*,**

**Plaintiffs,**

**V.**

**ENBRIDGE ENERGY,  
LIMITED PARTNERSHIP, *et al.*,**

## Defendants.

**Civil Action No. 1:16-cv-914**

**Judge Gordon J. Quist**

**CONSOLIDATED AND UNOPPOSED MOTION OF UNITED STATES  
FOR ENTRY OF THE CONSENT DECREE AND LEAVE TO  
FILE A SUPPORTING BRIEF IN EXCESS OF PAGE LIMITATION**

The United States of America, on behalf of the United States Environmental Protection Agency and the United States Coast Guard, moves for this Court to enter as a final judgment the revised Consent Decree, which is located at Exhibit 3 to the attached brief (“Memorandum”) in support of this unopposed motion. In addition, in accordance with Rule 5.7(f) of the Local Rules of the Civil Practice and Procedure (“Local Rules”), the United States moves for leave to file the attached Memorandum even though it exceeds the 25-page limit set forth under Local Rule 7.2(f). The United States has conferred with opposing counsel, who has authorized the United States to represent to the Court that the Defendants do not oppose this consolidated motion. In support of this motion, the United States states as follows:

1. On July 20, 2016, the United States lodged with Court a Consent Decree (ECF #3) that would resolve all claims asserted by the United States in this action under the Clean Water Act, as amended (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act, as

amended (“OPA”), 33 U.S.C. § 2701 *et seq.*, against Enbridge Energy Limited Partnership and seven affiliated Enbridge entities (collectively “Defendants” or “Enbridge”) with respect to two oil spills that occurred within two months of each other in the summer of 2010 – one in Marshall, Michigan and the other in Romeoville, Illinois.

2. Consistent with the terms of Paragraph 207 of the proposed Consent Decree, the United States published notices of the proposed settlement in the Federal Register on July 25, 2016 and on September 9, 2016 and held two public comment periods totaling more than 70 days. In accordance with the Department of Justice regulations, 28 C.F.R. § 50.7, the United States reserved the right under Paragraph 207 of the Consent Decree to withdraw from the proposed Consent Decree if the comments received from the public disclosed facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate.

3. The public comment period is now closed, and the United States received over 17,000 public comments regarding the proposed Consent Decree. The United States has carefully considered the public comments, which are located at Exhibit 1 to the attached Memorandum, and the United States, with EPA’s assistance, prepared responses, which are set forth in Exhibit 2 to the attached Memorandum. After considering these comments, the United States continues to believe that the proposed Consent Decree is highly favorable and in the public interest for the reasons discussed in the attached Memorandum.

4. Following the public comment period, the parties agreed to make four changes to proposed Consent Decree – none of which is material or triggers the need for a new public comment period. One change clarifies that replacement of a pipeline, known as “Original US Line 3,” is conditioned on Enbridge obtaining all permits and authorizations needed for the

replacement project, which was always the intended effect of the Consent Decree. Another change, which bars re-use of Original US Line 3 in the event that the replacement project is approved and completed, resolves questions raised by the public comments and, therefore, requires no further public review. Finally, there are two technical corrections to appendices to the proposed Consent Decree. The United States received no public comments on the original appendices, and the changes being made today are non-material corrections that conform the agreement to the original intent of the parties when they signed the original Decree lodged with the Court. All of these changes are discussed, in detail, in the attached Memorandum at pages 10-11, 13, and 16.

5. A revised Consent Decree, incorporating the changes outlined above, is located at Exhibit 3 to the attached Memorandum. Like the original version of the Decree (ECF #3), the revised Consent Decree spans more than 170 pages and sets forth, among other things, a comprehensive set of remedial measure that are designed to improve Enbridge's ability to prevent, detect, and respond to oil spills from its pipelines in seven states. A considerable portion of the attached Memorandum (pages 9 through 24) is devoted to summarizing the numerous and highly technical provisions relating to the remedial measures that Enbridge must implement under the Decree.

6. Given this lengthy discussion of the injunctive requirements of the Consent Decree, which should aid the Court in understanding the proposed settlement, the United States was unable to limit its memorandum to the 25-page limit set forth in the Local Rules, without impairing its discussion of the public comments, the proposed changes to the Consent Decree, and its reasons for continuing to believe that the proposed Consent Decree, as revised, is strongly in the public interest.

7. As discussed in the Memorandum, a court should enter a consent decree if it is fair, adequate, and consistent with the objectives of the law (here, CWA and OPA). The proposed Decree plainly meets this standard, because it includes a civil penalty that punishes Enbridge for the alleged violations of the CWA, sends a clear deterrent message to the entire industry, and fully compensates the Fund for removal costs incurred by the United States in overseeing the cleanup of the Marshal spill – all of which the settlement achieves while simultaneously putting in place a comprehensive program of measures to help protect communities, waterways, and adjoining shorelines in seven states from the potentially devastating effects of oil spills from Enbridge’s pipelines.

WHEREFORE, the United States respectfully requests that the Court grant leave for the United States to file the attached 37-page Memorandum in support of its unopposed motion for entry of the Consent, and that the Court sign and enter the proposed Consent Decree (as revised) as a final judgment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this day, the foregoing Consolidated and Unopposed Motion of United States for Entry of the Consent Decree and Leave to File a Supporting Brief in Excess of Page Limitation, together with a Memorandum In Support of the Unopposed Motion of United States for Entry of the Consent Decree, was filed electronically with the Clerk of the Court using the Court's Electronic Case Filing System, which sent notification of such filing to all counsel of record through the ECF notification system.

s/ Steven J. Willey

Dated: January 19, 2017