



September 14, 2021

*Via E-filing*

Ms. Lisa Felice  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
P. O. Box 30221  
Lansing, MI 48909

RE: MPSC Case No. U-20763

Dear Ms. Felice:

The following are attached for paperless electronic filing:

- Direct Testimony and Exhibits of Pres. Whitney B. Gravelle on behalf of Bay Mills Indian Community
- Proof of Service

Sincerely,

Christopher R. Clark  
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STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of Enbridge  
Energy, Limited Partnership for Authority to U-20763  
Replace and Relocate the Segment of Line 5  
Crossing the Straits of Mackinac into a Tunnel ALJ Dennis Mack  
Beneath the Straits of Mackinac, if Approval is  
Required Pursuant to 1929 PA 16; MCL 483.1  
et seq. and Rule 447 of the Michigan Public  
Service Commission's Rules of Practice and  
Procedure, R. 792.10447, or the Grant of other  
Appropriate Relief

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**TESTIMONY OF PRES. WHITNEY B. GRAVELLE**

**ON BEHALF OF**

**BAY MILLS INDIAN COMMUNITY**

**September 14, 2021**

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**PRES. WHITNEY B. GRAVELLE - DIRECT TESTIMONY - CASE NO. U-20763**

**I. INTRODUCTION & BACKGROUND**

**Q. Please state for the record your name, job title, and business address.**

A. My name is Whitney B. Gravelle. I am the duly elected President of Gnoozhekaaning, “Place of the Pike,” or the Bay Mills Indian Community, which is a federally recognized Indian Tribe with a government organized under the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. §5101, et seq. Bay Mills Indian Community is located at 12140 West Lakeshore Drive in Brimley, MI 49715.

Additionally, as a woman of Anishinaabe culture, I am a water keeper, which means I am responsible for maintaining and protecting water for my people, praying to the water, and caring for the water during ceremonies. Women carry sacred water teachings and pass them on to the next generation. I actively seek teachings with elders and medicine carriers within Bay Mills Indian Community, and help coordinate cultural trainings, sweat lodges, feasts, and opportunities to gather traditional medicines amongst our tribal community.

**Q. Please state your educational background.**

A. I earned a Bachelor of Arts of Interdisciplinary Studies in Social Science from Michigan State University with an emphasis in Political Science and East Asian Studies. I earned my juris doctor, cum laude, from Michigan State University Law School. I also completed an indigenous law certificate.

**Q. On whose behalf is this testimony being offered?**

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1 A. I am testifying on behalf of Bay Mills Indian Community. This testimony reflects my  
2 experiences as a lifelong citizen of Bay Mills, as former Chief Judge of Bay Mills Tribal  
3 Court and in-house counsel, as well as the current President of Bay Mills.

4 **Q. Please summarize your experience in tribal government.**

5 A. I have worked in tribal government for five years. On March 18, 2021, I was elected  
6 President of Bay Mills, and I was sworn into office on March 19, 2021. Prior to being  
7 elected President, I served as in-house counsel for Bay Mills from December 2018 to  
8 March 2021. I also served as chief judge for the Bay Mills Tribal Court from November  
9 2017 to December 2018. I have been teaching tribal law at Bay Mills Community College  
10 since 2019.

11 In my role as President, I represent Bay Mills by serving on the Chippewa Ottawa Resource  
12 Authority, the Great Lakes Indian Fish and Wildlife Commission, the Inter-Tribal Council  
13 of Michigan, the United Tribes of Michigan, and also represent indigenous communities  
14 and perspectives by sitting on the Michigan Women's Commission and the Michigan  
15 Advisory Council on Environmental Justice.

16 **Q. Have you testified about Bay Mills' interests before this Commission or in any other**  
17 **proceeding?**

18 A. I have not previously testified before this Commission. In my role as President of Bay  
19 Mills, I have testified before Michigan Senate's Energy and Technology Committee.

20 **Q. What is the purpose of your testimony?**

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1 A. I am testifying on behalf of Bay Mills regarding Bay Mills' interests in protecting treaty  
2 rights and cultural and natural resources from risk and harm associated with the Line 5  
3 Tunnel Project. Bay Mills and its citizens will be directly affected by the Commission's  
4 decision in this matter. I will testify that the proposed route for the Line 5 Tunnel Project  
5 is unreasonable because it would be constructed through and operate in an environmentally  
6 sensitive area of profound cultural and spiritual significance to Bay Mills. I will also testify  
7 that the proposed Line 5 Tunnel Project is likely to impair, pollute, and/or destroy natural  
8 resources and species because of the Project's contributions to climate change. I will  
9 highlight species that hold economic, subsistence, and cultural significance to Bay Mills:  
10 lake whitefish, walleye, loons, wild rice, and sugar maple.

11 **Q. Are you sponsoring any exhibits?**

12 A. Yes, I am sponsoring the following exhibits:

13 Exhibit BMC-1: Resolution No. 21-05-01A

14 Exhibit BMC-2: Resolution No. 15-3-16-B

15 Exhibit BMC-3: Tribal Comments on Dynamic Risk Draft Alternatives  
16 Analysis, Aug. 1, 2017

17 Exhibit BMC-4: Letter, President Bryan Newland to Governor Snyder, Feb.  
18 7, 2018

19 Exhibit BMC-5: Letter, President Bryan Newland to Governor Whitmer,  
20 May 10, 2019

21 Exhibit BMC-6: Map of Ceded Territory

22 Exhibit BMC-7: Albert LeBlanc Fishing Citation

**II. THE BAY MILLS INDIAN COMMUNITY**

**Q. Describe the Bay Mills Indian Community.**

A. The Bay Mills Indian Community is a federally recognized tribe and sovereign nation. The Bay Mills Indian Community was first recognized by Congress in the treaty of Sault Ste. Marie in 1820 and was officially recognized by an Act of Congress on June 19, 1860. Bay Mills is one of several Anishinaabe (Ojibwe, Odawa, and Pottawatomi) tribal nations with a deep connection to the lands and waters of the Upper Great Lakes, who have lived several hundreds of years around the Whitefish Bay, the falls of the St. Mary River and the bluffs overlooking Tahquamenon Bay, all on Lake Superior, most of which still encompass their present-day homeland. The Anishinaabe are a group of culturally related people that live in both Canada and the United States, concentrated around the Great Lakes.

There are 2,236 citizens of Bay Mills. The tribal government structure as it exists today was created under the Indian Reorganization Act in 1934, with a formal Constitution adopted in 1936. Bay Mills Indian Community is comprised of five of the six bands of Sault Ste. Marie bands of Chippewa Indians. However, the ancestors of the people of the Bay Mills inhabited the current boundaries and surrounding areas for hundreds of years prior. The boundaries of the Bay Mills reservation span the surrounding townships of Bay Mills and Superior Townships. In addition, the Bay Mills Indian Community also includes 607 acres on the southwest shore of Sugar Island, an Island between the Michigan mainland and Canadian Province of Ontario.

The Bay Mills reservation is located in the eastern part of Michigan's Upper Peninsula, and tribal citizens live throughout Chippewa, Mackinac, and Luce Counties.

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1   **Q.     What does it mean to be a sovereign nation?**

2   **A.**    As a sovereign nation, Bay Mills has an inherent right to self-governance and self-  
3           determination. Bay Mills has a government-to-government relationship with both the  
4           United States and the state of Michigan.

5           As a sovereign entity, the Bay Mills is fully responsible for its own operations as a  
6           governmental unit, including public safety/law enforcement, judicial system, health care,  
7           and economic development.

8   **Q.**    **Was that government-to-government relationship respected at the time the Line 5**  
9           **pipeline was initially constructed?**

10   **A.**    No. Bay Mills was an independent sovereign nation then, but the tribal nation was not  
11           consulted about the original route or construction of the pipeline.

12   **III.    CONCERNS ABOUT THE ROUTE OF THE LINE 5 TUNNEL PROJECT**

13   **Q.**    **What is your opinion of the proposed route for the Line 5 Tunnel Project?**

14   **A.**    I am deeply concerned about the proposed route for the Line 5 Tunnel Project. It is  
15           dangerous to construct a tunnel and route a pipeline through lands and waters that are  
16           central to our existence as indigenous people and as a Tribal Nation. The Line 5 dual  
17           pipelines and tunnel project have the potential to significantly affect, and indeed pose  
18           serious threats to, the exercise of our reserved treaty rights, our ability to preserve cultural  
19           resources, our cultural and religious interests in the Great Lakes, our economy, and the  
20           health and welfare of our tribal citizens. The Straits of Mackinac is a place of deep spiritual  
21           and cultural meaning to my people, where there are important cultural and historic



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1 resources still being learned of, and where Bay Mills and other Tribal Nations have Treaty  
2 rights.

3 As the Bay Mills Indian Community recognized when the Executive Council requested the  
4 decommissioning of Line 5 at the Straits of Mackinac in Resolution No. 15-3-16, the  
5 human and natural ecosystems of the Straits of Mackinac are both too complex and too  
6 fragile for a replacement pipeline for Line 5 to be successfully sited and constructed. The  
7 continued operation of Line 5 may lead to a rupture and catastrophic damage to the waters  
8 of the northern Lakes Michigan and Huron and the people who depend on them for their  
9 economic livelihood, their quality of life, their cultural and aesthetic wellbeing, and their  
10 existence. For this reason, Bay Mills has both banished the existing Line 5 dual pipelines  
11 from our reservation and the lands and waters of our ceded territory, in Resolution No. 21-  
12 05-01A, and sought the decommissioning of Line 5, in Resolution No. 15-3-16-B (attached  
13 as Exhibits BMC-1 and Exhibit BMC-2, respectively). Bay Mills leadership has long  
14 advocated for the protection of the Straits of Mackinac from the continued operation of the  
15 Line 5 oil pipeline (see, e.g., Exhibits BMC-3, BMC-4, BMC-5, etc).

16 **Q. What is banishment?**

17 A. Banishment is a traditional, historical, and customary form of tribal law that has existed  
18 since time immemorial and is only exercised by Bay Mills when egregious acts and  
19 misconduct have harmed our tribal citizens, treaty rights, territories, and resources.  
20 Banishment is a permanent and final action.

**A. THE BAY MILLS INDIAN COMMUNITY HAS A DEEP CONNECTION  
TO THE STRAITS OF MACKINAC.**

**Q. What is Bay Mills' connection to the Straits of Mackinac?**

A. Bay Mills recognizes the Straits of Mackinac as the center of creation. The Straits of Mackinac are also home to many species, natural resources, treaty resources, and cultural resources that are important to Bay Mills. The Straits of Mackinac and the Great Lakes are central to Bay Mills' cultural, traditional, and spiritual identity.

**Q. Describe how the Straits of Mackinac are part of Bay Mills' creation story.**

A. According to our oral histories, the creation of North America began with a flooded Earth. The animals received instructions from the Creator to swim deep beneath the water and collect soil that would be used to recreate the world. All of the animals failed, but the body of the muskrat, the last animal that tried, resurfaced carrying a small handful of wet soil in its paws. It is believed that the Creator used the soil collected and rubbed it on the Great Turtle's back, forming the land that became known as Turtle Island, the center of creation for all of North America. According to history, the Great Turtle emerged from the flood in the Straits of Mackinac. The word "Mackinac" is derived from the original name of the Great Turtle from the Ojibwe story of Creation. The Straits are more than a waterway; they are a place of ongoing spiritual significance to the way of life of Bay Mills since time immemorial.

**Q. Describe Bay Mills' present relationship with the Straits of Mackinac.**

A. For Bay Mills, water is life. The Straits of Mackinac waters are part of our fishery. Over half of Bay Mills' citizen households rely on fishing for some or all of their income. Fish and fishing are not only part of our citizens' subsistence and livelihoods, but traditional

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1 fishing knowledge is part of our culture, passed from generation to generation, and fish are  
2 an important food used in our ceremonies. Lake Whitefish, Lake Trout, and other fish are  
3 used in our cultural traditions for naming and for feasting in celebration of children, ghost  
4 suppers, burial ceremonies, and other cultural traditions.

5 Bay Mills also views the ceded territory, including the Straits of Mackinac, as one, cohesive  
6 traditional cultural landscape or traditional cultural property. Our interconnected  
7 relationship with land and water as indigenous people is also dependent on the exercise of  
8 our treaty rights, and that those treaty rights remain meaningful and available to Tribal  
9 Nations, such as by guaranteeing tribal citizens continued access to waters and lands where  
10 they hold rights, as well as by preserving the resources—like fish populations and  
11 habitats—upon which the treaty rights depend. Further, each of the Great Lakes has a water  
12 spirit—a water being—that protects the lake and its resources or helps guide and direct  
13 how water is used. Our cultural teachings instruct that the details of the water beings are  
14 only talked about at certain times of the year.

15 **B. THE BAY MILLS INDIAN COMMUNITY HAS TRIBAL TREATY**  
16 **RIGHTS TO RESOURCES IN THE STRAITS OF MACKINAC AND**  
17 **THROUGHOUT THE GREAT LAKES REGION.**

18 **Q. Is Bay Mills a signatory to a treaty with the United States government?**

19 A. The Bay Mills Indian Community is the modern-day successor in interest to the bands of  
20 Ojibwe people who were identified by the negotiators for the United States as living near  
21 Sault Ste. Marie in the Treaty of Sault Ste. Marie of June 16, 1820; the Treaty of  
22 Washington of March 28, 1836, 7 Stat. 491; the Treaty of Detroit of July 30, 1855; and the  
23 Treaty of Detroit of August 2, 1855.

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1   **Q.     Describe the 1836 Treaty and how it came about.**

2   A.     At the time of the Treaty, the bands relied heavily on the fishery resources found in the  
3           Upper Great Lakes for their subsistence, and as an item of commerce with the citizens of  
4           the United States.

5           Band representatives joined with Ojibwe and Ottawa band representatives in Washington,  
6           D.C. in early March 1836 at the request of the United States to negotiate a treaty of cession.

7           The Ojibwe and Ottawa signed the Treaty on March 28th and ceded to the federal  
8           government over 14 million acres of land and, in addition, the waters of Lake Superior  
9           lying eastward of the Chocolay River, the northern portion of Lake Huron to the mouth of  
10          the Thunder Bay River, and the waters of Lake Michigan from Ford River south of  
11          Escanaba to Grand Haven on Lake Michigan's southeastern shore, and including all the  
12          waters connecting the three lakes.

13          Although our ancestors were willing to provide land to the United States, they carefully  
14          protected the traditional lifeway and its reliance on the environment's natural resources for  
15          food, shelter, medicines, and for trade. This was embodied in Article Thirteenth of the  
16          Treaty, which reserved the right to hunt, and the other usual privileges of occupancy until  
17          the land was required for settlement.

18   **Q.     What is the "ceded territory"?**

19   A.     The ceded territory is the approximately 14 million acres of land and inland waters and  
20          approximately 13 million acres in Lakes Michigan, Huron, and Superior that the tribal  
21          signatories to the 1836 Treaty ceded to the United States, paving the way for Michigan's

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1 statehood. The ceded territory includes a large part of Michigan's Upper and Lower  
2 Peninsulas and the Straits of Mackinac, and the Line 5 pipeline runs through the ceded  
3 territory. A map of the ceded territory is Exhibit BMC-6.

4 The tribes only agreed to this vast cession of our ancestral home upon assurance that we  
5 would have the continued ability to exercise our inherent rights, reserved by the Treaty, to  
6 hunt, fish, and gather throughout the ceded territory.

7 **Q. How has Bay Mills protected its 1836 Treaty rights?**

8 A. The Treaty right to fish has been fiercely protected by the Bay Mills Indian Community  
9 and its members, including litigation regarding: the continued existence of the Treaty right;  
10 the member's right to use traditional fishing gear such as gillnets; and the limitations on  
11 the State's power to regulate the exercise of the treaty right to fish. The first round of  
12 litigation ended in the 1976 decision of the Michigan Supreme Court that the right to fish  
13 in the ceded waters of Michigan's Great Lakes, expressly reserved by Article Thirteenth,  
14 continue to exist, and that the State's power to regulate treaty-protected fishermen was  
15 limited to those restrictions exclusively necessary to protect the resource from depletion.  
16 The case is *People v. LeBlanc*, 399 Mich. 31; 248 NW2d 199 (1976). This dispute began  
17 with a call from my grandfather, Bay Mills citizen Albert LeBlanc ("Big Abe") to the local  
18 DNR office in 1972, stating that he had set a gill net in Lake Superior. Mr. LeBlanc was  
19 issued a citation for using an illegal fishing device and the battle began (attached as Exhibit  
20 BMC-7).

21 The next round was waged in federal court and began in 1973 with the filing of a lawsuit  
22 against the State of Michigan by the United States, as trustee for the Bay Mills Indian

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1 Community, which asserted that the State's regulation of treaty-protected fishing activities  
2 by the Tribe's fishers impaired and interfered with the Tribe's treaty rights, in  
3 contravention of the laws and treaties of the United States. That litigation, known as *United*  
4 *States v. Michigan*, Case No. 2:73 -cv- 26 (W.D. Mich.) resulted in a decision in 1979 in  
5 which the Tribe's treaty rights were held paramount to the fishing regulations of the State;  
6 the case is reported at 471 F. Supp. 192 (W.D. Mich. 1979). The case has been on-going  
7 since then, as additional Tribes were federally recognized, and management and regulatory  
8 frameworks were developed through a combination of negotiated agreements and court  
9 orders. The United States, the Tribes and the State are currently engaged in negotiations  
10 for a new management and allocation agreement which will replace the current one.

11 I share the legal history of the Treaty fishing controversies not only to emphasize the  
12 existence of Tribal rights regarding the fishery, but also to serve as evidence that the right  
13 to fish, and the need for a natural environment in which fish can thrive, is of the utmost  
14 importance to the Tribe and its members, and will be fiercely protected. Commercial and  
15 subsistence fishing is the primary occupation of Bay Mills tribal citizens, and it has been  
16 from Treaty times until the present day. Tribal commercial and subsistence fishers are  
17 licensed and regulated by the Tribal Nation. Today, over half of our citizen households rely  
18 on fishing for all or a portion of their annual income.

19 In addition to the management and allocation agreements arising from that litigation, which  
20 primarily concern the Great Lakes fisheries, Bay Mills also collaborates with other Tribal  
21 Nations and the state of Michigan on the management and allocation of inland waters and  
22 land resources.

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1 Bay Mills also is a member of and works with intertribal bodies including the Chippewa  
2 Ottawa Resource Authority (“CORA”) and Great Lakes Indian Fisheries and Wildlife  
3 Commission (“GLIFWC”) to study, manage, and protect the resources upon which our  
4 Treaty rights depend.

5 **Q. What resources are protected by the 1836 Treaty?**

6 A. The 1836 Treaty protects a lifeway or way of life. The right to fish, hunt, and gather as  
7 identified in the Treaty is then protected as part of that way of life. The activity of fishing  
8 goes much further than just fishing, it is about maintaining a relationship with fish – to  
9 sing, dance, and play with fish as our customs and culture dictate. This includes the  
10 teachings, stories, history, and culture that are also passed down between elder and child  
11 when engaging in a traditional lifeway such as fishing. In order to continue our lifeway,  
12 we need access to clean water and a healthy ecosystem.

13 **Q. In your opinion, will the Line 5 Tunnel Project affect the rights and resources**  
14 **protected by the 1836 Treaty if constructed and operated along the proposed route?**

15 A. Yes.

16 **Q. In your opinion, how will the Line 5 Tunnel Project affect the rights and resources**  
17 **protected by the 1836 Treaty if constructed and operated along the proposed route?**

18 A. In my opinion, the Line 5 Tunnel Project is a threat to Treaty resources and the natural  
19 resources of Michigan.

20 The Line 5 Tunnel Project, if constructed, will perpetuate the flow of oil to, through, and  
21 from the Straits of Mackinac. This carries the risk of an oil spill into the Straits into the

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1 future. It also carries the risk of an oil spill elsewhere in the ceded territory or, because  
2 many of the region's waters are connected, into the Straits and Great Lakes indirectly. Such  
3 a spill would be catastrophic for our people's economic livelihood and cultural wellbeing.  
4 Further, by perpetuating the flow of oil, I am concerned about the Line 5 Tunnel Project's  
5 contribution to climate change.

6 **C. CULTURAL RESOURCES IN THE STRAITS OF MACKINAC.**

7 **Q. Describe cultural resources that are present in the Straits of Mackinac.**

8 A. The Straits are part of our ceded territory, which contains bottomland and terrestrial  
9 archaeological sites that are significant to our people. These are submerged paleo-  
10 landscapes, cemeteries, and isolated human burials of our ancestors, many of which are  
11 eligible for listing on the National Register of Historic Places, a recognition that they are  
12 important to our national patrimony.

13 **Q. What do you mean by a cultural landscape?**

14 A. By cultural landscape, I mean that damage, destruction, or contamination of one part of the  
15 landscape damages the entire landscape. In fact, Bay Mills is pursuing the nomination of  
16 the Straits of Mackinac as a Traditional Cultural Property ("TCP") for inclusion on the  
17 National Register of Historic Places.

18 Due to Bay Mills Indian Community's significant and critical connection to the Straits of  
19 Mackinac, the Great Lakes, and the inland lands and waters that are part of the ceded  
20 territory, we have been deeply involved in the various permit processes for the Line 5  
21 Tunnel Project.



**IV. CONCERNS ABOUT CLIMATE CHANGE AND THE LINE 5 TUNNEL PROJECT.**

**Q. Broadly, what concerns do you have regarding climate change and the future of Bay Mills?**

A. As the effects of climate change continue to grow larger and more pronounced, the people, land, and resources of indigenous communities in the United States are threatened by various climate change impacts and vulnerabilities. The indigenous way of life that has persisted for thousands of years will be undermined as current and projected climate change impacts take their toll. Key vulnerabilities include the loss of traditional knowledge in the face of rapidly changing ecological conditions, increased food insecurity due to reduced availability of traditional foods, changing water availability, arctic sea ice loss, permafrost thaw, and relocation from historic homelands.

Climate change is already greatly harming the Great Lakes, and the fisheries, habitats, and ecosystems and accordingly, having a negative impact on tribal sovereignty, economies, and cultures the Great Lakes now sustain and have sustained since time immemorial.

A necessary precondition to sustainable fisheries or sustainable hunting and harvesting is a healthy Great Lakes ecosystem. Sustainable fish production requires dynamic and diverse habitats with biological, chemical, and physical features that continually meet reproductive, growth, and survival integrity standards. A healthy Great Lakes ecosystem also benefits commerce, the hospitality industry, recreational activities, and a myriad of other beneficial activities essential to quality of life for those fortunate enough to call the Great Lakes region home. Accordingly, strong self-sustaining fish populations are not only

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1 indicators of healthy ecosystems and healthy environmental conditions, but they also  
2 support associated fisheries in the Great Lakes, which provide inherent societal values.

3 **Q. Describe the Bay Mills Indian Community's teachings that guide how you think about**  
4 **climate change.**

5 A. Our people – the Anishinaabe – also have a teaching that says the decisions we make today  
6 should result in a sustainable world seven generations into the future. It reminds us to  
7 understand that the decisions we make are not limited by the immediate concerns of today,  
8 but instead have implications long after we are gone.

9 **Q. Can you elaborate on a few specific resources that are important to Bay Mills?**

10 A. Yes. For purposes of this testimony, I will discuss lake whitefish, walleye, wild rice, loons,  
11 and sugar maple. These are not the only species of importance to Bay Mills.

12 **Q. Please describe the significance of lake whitefish.**

13 A. As mentioned previously, within the Straits of Mackinac are numerous spawning grounds  
14 for different fish species – including Lake Whitefish – which our people hold in sacred  
15 regard. According to Tribal Nations' oral histories, during a time of famine and desolation,  
16 the eight traditional clans Bear, Turtle, Deer, Loon, Crane, Marten, Bird, and Whitefish  
17 came together to discuss how to save the Anishinaabe throughout the Great Lakes Region.  
18 After much debate and discussion, the Whitefish clan chose to sacrifice itself to provide  
19 for the wellbeing of the people. The Whitefish clan submerged itself in the Great Lakes  
20 and became the Lake Whitefish that the Tribal Nations fish and eat today, as a sole source  
21 and means to provide for the prosperity of the Anishinaabe.

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1 Lake Whitefish are the primary commercial and subsistence fish that tribal fishers rely on  
2 to make an annual income. Tribal fishers can sell Lake Whitefish for more money per  
3 pound than they can sell any other fish. Unfortunately, Lake Whitefish are a coldwater fish  
4 species. It is widely recognized that climate change leads to the warming of their habitat  
5 and may lead to ecosystem disruptions in the Great Lakes region.

6 **Q. Please describe the significance of wild rice.**

7 A. To the Anishinaabe of the Great Lakes Region, wild rice (“manoomin”) is much more than  
8 food, it is a culture, it is a history, and it is a livelihood. According to the oral traditions of  
9 the Anishinaabe, many centuries ago the Creator told the Anishinaabe people to travel west  
10 and find the lands where the “food grows on water” or the Anishinaabe people would  
11 perish. The word manoomin is derived from two words in Anishinaabemowin language,  
12 “manidoo” which means spirit and “miin” which means seed. Together they create  
13 manoomin, which translates into the “good spirit seed” in the Anishinaabemowin language.  
14 Wild rice is a food that is considered sacred and essential to the culture and traditions of  
15 the Anishinaabe in the Great Lakes region. Wild rice defines what it means to be  
16 Anishinaabe, it is the keeper of a culture, and to this day wild rice plays a significant role  
17 in the history and cultural traditions of the Anishinaabe. In fact, wild rice is a traditional  
18 gift of appreciation.

19 **Q. Describe the significance of wild rice.**

20 A. Wild rice is a traditional food source and part of the traditional diet of the Bay Mills  
21 citizens. Wild rice continues to be harvested in the ceded territory today in areas near Tribal  
22 Nations’ reservations in Michigan.

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1   **Q.     Please describe the significance of loons.**

2   A.     The Anishinaabe people believe that Creator gifted the clan system to maintain societal  
3           order on Earth. Each clan has roles, talents, and responsibilities to contribute to the overall  
4           wellbeing of the entire nation. There are seven primary clans of the Anishinaabe people;  
5           Loon, Crane, Fish, Bird, Bear, Marten, and Deer. Traditionally, the Loon (“maang”), clan  
6           worked together with the Crane clan as eloquent leaders and orators. They were skilled  
7           planners, negotiators, & upheld the Seven Teachings. If ever there was a conflict between  
8           the Loon & Crane clans, the fish clan helped mediate the situation.

9   **Q.     Please describe the significance of sugar maple.**

10  A.     Sugar maple is the species of trees that the Anishinaabe use to harvest maple syrup  
11           (“zhiiwaagamizigan”), during the months of March and April. Maple syrup is considered  
12           one of the first medicines given by the Creator during a time of year when it was difficult  
13           to hunt or harvest. Maple syrup is treated by the Anishinaabe as a gift that ended starvation  
14           and was a sign and beginning for a new season of life.

15  **Q.     Does that complete your testimony?**

16  A.     Yes.

# EXHIBIT BMC-1

BAY MILLS INDIAN COMMUNITY  
"GNOOZHEKAANING" PLACE OF THE PIKE

BAY MILLS TRIBAL ADMINISTRATION  
12140 West Lakeshore Drive  
Brimley, Michigan 49715



PHONE: (906) 248-3241  
FAX: (906) 248-3283

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## RESOLUTION NO. 21-05-10A

### **Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded Territory, waters of the Great Lakes, and the Straits of Mackinac**

**WHEREAS:** The Gnoozhekaaning, *Place of the Pike*, or Bay Mills Indian Community is a federally recognized Indian Tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5101, *et seq.*; and

**WHEREAS:** The Bay Mills Indian Community is the recognized successor to the Sault Ste. Marie area bands which signed the Treaty of March 28, 1836 (7 Stat. 491), which reserved for all time the right to fish, hunt, and gather in the ceded land and waters of the State of Michigan – including the ceded waters of Lake Superior, Huron, and Michigan including the Straits of Mackinac; and

**WHEREAS:** The Bay Mills Indian Community acknowledges although our ancestors were willing to provide land and water to the United States for the creation of the State of Michigan, they carefully preserved and protected our traditional lifeways and our reliance on the environment's natural resources, which is embodied in Article Thirteenth of the 1836 Treaty of Washington; and

**WHEREAS:** The United States Constitution (Article VI.C2.1.1.1) makes clear that all treaties made with Tribal Nations shall be the supreme law of the land; and

**WHEREAS:** The right to fish, hunt, and gather throughout the ceded territory under the 1836 Treaty of Washington is dependent upon the ability of the Great Lakes and inland ecosystems to support viable and stable treaty resources; and

**WHEREAS:** Commercial and subsistence fishing is the primary occupation of the Bay Mills Indian Community tribal citizens from treaty times until present day, and over half of our citizen households rely on fishing for all or a portion of their annual income; and

**WHEREAS:** These treaty rights have been fiercely protected by Bay Mills Indian Community and its citizens, including litigation regarding the continued existence of the treaty right, the citizen's right to use traditional fishing gear such as gillnets, and the limitations on the State of Michigan's power to regulate the exercise of the treaty right, (see *People v. Leblanc*, 399 Mich 31; 248 NW2d 199 (1976); *United States v. Michigan* 471 F. Supp. 192 W.D. Mich. (1979)); and

**WHEREAS:** The Straits of Mackinac area is one of the most strategically located areas in the Great Lakes region and has been the center for cultural contact and interaction for thousands of years, which is sensitive for the presence of terrestrial and bottomland archaeological sites, submerged paleo landscapes, cemeteries and isolated human burials, significant architecture and objects, and historic districts; and

**WHEREAS:** Bay Mills Indian Community acknowledges the Straits of Mackinac as a Traditional Cultural Landscape and Property that is eligible for inclusion in the National Register of Historic Places based on its associations with the cultural practices, traditions, histories, beliefs, lifeways, arts, and social institutions of our living community; and

**WHEREAS:** Banishment is a traditional, historical, and customary form of tribal law that has existed since time immemorial and is only exercised by Bay Mills Indian Community when egregious acts and misconduct have harmed our tribal citizens, treaty rights, territories, and resources; and

**WHEREAS:** Since 1953 Enbridge Energy, Inc. and its predecessor companies have operated a 645 mile, 30-inch diameter pipeline, named Line 5, that runs through the State of Michigan and Bay Mills Indian Community's treaty ceded territory, which transports a variety of petroleum products; and

**WHEREAS:** The Line 5 dual pipelines were designed to function for a 50-year period, which has already expired, and is already subject to small ruptures amounting in more than 1,100,000 gallons of oil and natural gas products that have spilled along the upland portion of the Line, directly impacting resources which the Bay Mills Indian Community has a treaty-protect right to enjoy; and

**WHEREAS:** The Environmental Protection Agency has fined Enbridge Energy, Inc. \$6.5 million dollars for failure to maintain and for failure to repair of thousands of dents, cracks, and metal loss along the Lakehead Pipeline System including the Line 5 dual pipelines; and

**WHEREAS:** Enbridge Energy, Inc. has demonstrated through various actions it does not honor the rights and interest of Tribal Nations by: altering underwater archeological reports (see Letter from Professor John M. O'Shea, Curator of Great Lakes Archaeology, to Ms. MacFarlane-Faes, Deputy State Historic Preservation Officer (February 12, 2020)); utilizing traditional cultural practices against Tribal Nations; and attempting to initiate non-expert cultural survey work of the Straits of Mackinac without informing or engaging permitting authorities; and

**WHEREAS:** Continued operation of Line 5 dual pipelines will ultimately result in a rupture of the pipeline, causing catastrophic damage to the lands and waters near the Straits of Mackinac, destruction of our Tribal Nation's treaty rights, and harm the people who depend on the Great Lakes for their economic livelihood, their quality of life, their cultural wellbeing, and their very existence.

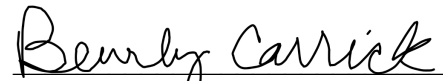
**NOW, THEREFORE IT BE RESOLVED**, that the Executive Council of the Bay Mills Indian Community hereby banishes Enbridge Energy, Inc.'s Line 5 dual pipelines from the Bay Mills Indian Community reservation and the lands and waters of our ceded territory – including the Straits of Mackinac.

**AND BE IT FURTHER RESOLVED**, the Executive Council hereby requests that any regulatory body with oversight authority, including the Chippewa Ottawa Resource Authority, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, Sault Ste. Marie Tribe of Chippewa Indians, the State of Michigan, and the United States mandate and enforce the banishment of Enbridge Energy, Inc.'s Line 5 dual pipelines from the 1836 Treaty of Washington ceded territory.

**APPROVED:**

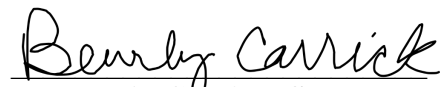
\_\_\_\_\_  
**Whitney B. Gravelle, President**  
**Executive Council**  
**Bay Mills Indian Community**

**ATTEST:**

  
**Beverly A. Carrick, Secretary**  
**Executive Council**  
**Bay Mills Indian Community**

#### **CERTIFICATION**

I, the undersigned, as Secretary of the Bay Mills Indian Community Executive Council, do hereby certify that the above Resolution was adopted and approved at a Special Meeting of the Bay Mills Executive Council held at Bay Mills, Michigan on the 10 day of May 2021, with a vote of 4 for, 0 against, 0 absent and 1 abstaining. As per provisions of the Bay Mills Constitution, the Tribal President must abstain except in the event of a tie.

  
**Beverly A. Carrick, Secretary**  
**Bay Mills Executive Council**



# EXHIBIT BMC-2

DIR00043



## Bay Mills Indian Community

12140 West Lakeshore Drive  
Brimley, Michigan 49715  
(906) 248-3241 Fax-(906) 248-3283



### RESOLUTION NO. 15-3-16-B

#### Support for Decommission of Enbridge Line 5 Oil Pipeline under the Straits of Mackinac

- WHEREAS: The Bay Mills Indian Community is the recognized successor to Sault Ste. Marie area bands which signed the Treaty of March 28, 1836 (7 Stat. 491), by which the right to fish in the ceded waters of Lakes Superior, Huron and Michigan--including the Straits of Mackinac-- was expressly reserved for all time, and
- WHEREAS: Enbridge Pipelines, Inc., operates a 645-mile, 30-inch diameter pipeline, named Line 5, which was constructed in 1953 and transports a variety of petroleum products, and
- WHEREAS: Line 5 splits into two 20-inch diameter parallel underground pipelines upon reaching the northern shore of the Straits of Mackinac, which cross the Straits west of the Mackinac Bridge for a distance of 4.6 miles, and which at any given time contains nearly one million gallons of crude oil, and
- WHEREAS: The Tribe is concerned about any discharge of petroleum products into the Straits, as it would adversely affect fishery shoaling, spawning and nursery areas in both Lakes Michigan and Huron which encompass the most productive fishing areas in the 1836 Treaty ceded waters, and
- WHEREAS: A catastrophic oil spill into the Straits would devastate the aquatic ecosystem, damage the shoreline of Lakes Huron and Michigan for hundreds of miles, and disrupt, degrade and diminish the tribal fishery reserved by treaty, and
- WHEREAS: Line 5 was designed to function for a 50-year period, which has already expired, and it is already subject to small ruptures, which have been documented as occurring along the upland portion of the Line, resources which the Bay Mills Indian Community has a treaty-protected right to enjoy, and
- WHEREAS: Enbridge has failed to adequately monitor and maintain its pipelines in this State, as is demonstrated by the 2010 pipeline rupture of oil into the Kalamazoo River, which contaminated 40 miles of that body of water, and

Resolution No. 15-3-16-B

WHEREAS: Continued operation of Line 5 will ultimately result in a rupture of the pipeline, causing catastrophic damage to the waters of northern Lakes Michigan and Huron and the people who depend on them for their economic livelihood, their quality of life, their cultural and esthetic well being and their very existence, and

WHEREAS: The human and natural ecosystems of the Straits of Mackinac are both too complex and too fragile for a replacement pipeline for Line 5 to be successfully sited and constructed within the reasonably foreseeable future.

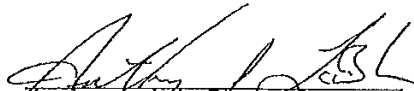
NOW, THEREFORE BE IT RESOLVED, that the Executive Council of the Bay Mills Indian Community hereby requests the Michigan Petroleum Pipelines Task Force to recommend that the Enbridge Line 5 Pipeline underlying the Straits of Mackinac be decommissioned.

AND BE IT FURTHER RESOLVED, that the Executive Council hereby requests that any regulatory body with oversight authority over the subject matter and/or geographic area to take any and all actions reasonable and necessary to mandate and enforce the decommissioning of Line 5 at the Straits of Mackinac

APPROVED:

  
Levi D. Carrick Sr., President  
Bay Mills Indian Community  
Executive Council

ATTEST:

  
Anthony J. LeBlanc, Secretary  
Bay Mills Indian Community  
Executive Council

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community, do hereby certify that the above Resolution was adopted and approved at a meeting of the Executive Council held at Bay Mills, Michigan, on the 16th day of March, 2015, with a vote of 3 for, 0 opposed, 1 absent, and 1 abstaining. As per provisions of the Bay Mills Constitution, the President must abstain except in the event of a tie.

  
Anthony J. LeBlanc, Secretary  
Bay Mills Indian Community  
Executive Council

# EXHIBIT BMC-3



August 1, 2017

Hon. Rick Snyder, Governor  
State of Michigan  
Post Office Box 30013  
Lansing, Michigan 48909

Hon. Bill Schuette, Attorney General  
Michigan Department of Attorney General  
Post Office Box 30212  
Lansing, Michigan 48909

Hon. C. Heidi Grether, Director  
Michigan Department  
of Environmental Quality  
Post Office Box 30473  
Lansing, Michigan 48909

Hon. Keith Creagh, Director  
Michigan Department of Natural Resources  
Post Office Box 30028  
Lansing, Michigan 48909

Hon. Valerie Brader, Executive Director  
Michigan Agency for Energy  
Post Office Box 30221  
Lansing, Michigan 48909

**RE: Tribal Comments on Dynamic Risk Draft Alternatives Analysis**

Dear Governor Snyder, Attorney General Schuette, Director Grether, Director Creagh, and Executive Director Brader,

The Straits of Mackinac occupy a hallowed place in the history of the Indian and non-Indian peoples of Michigan. They are at once an iconic symbol of the State and a sacred wellspring of Anishinaabe life and culture. They have served as a focal point of our shared history for centuries.

In response to the State's invitation, Michigan's twelve federally-recognized Tribes submit these comments regarding the June 27, 2017, Draft Alternatives Analysis for the Straits Pipelines prepared by Dynamic Risk ("Draft Report"). We do so in the spirit of our cherished partnership with the State as co-stewards of the Straits, which while mighty are also vulnerable, and which serve so powerfully as an emblem of our entwined past, present, and future.<sup>1</sup>

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<sup>1</sup> Individual Tribes signatory to these comments may also submit additional comments on their own behalf.

Tribal Comments on Dynamic Risk Draft Alternatives Analysis  
August 1, 2017  
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### Key Takeaways from the Draft Report

- In its February 22, 2016, Request for Information and Proposals (Independent Alternatives Analysis for the Straits Pipelines) (“RFP”), the State, quoting from the Michigan Petroleum Pipeline Task Force Report, declared:

*Decisions about the future of the Straits Pipelines must be informed by an independent, comprehensive analysis of alternatives . . . [requiring] a study by relevant experts of the feasibility, costs, including the specific costs to Michigan, and public risks and benefits of alternatives to the existing Straits Pipelines.*

RFP at 2 (emphasis in original) (quoting Task Force Report at 50). The RFP accordingly sought an alternatives analysis, the “overall objective of [which] is to provide the State of Michigan and other interested parties with an independent, comprehensive analysis of alternatives to the existing Straits Pipelines, and the extent to which each alternative promotes the public health, safety and welfare and protects the public trust resources of the Great Lakes.” RFP at 5.

- Dynamic Risk’s Draft Report evaluates a range of alternatives with respect to the Straits Pipelines, including maintenance of the status quo. While the Draft Report’s discussion of those alternatives is subject to significant criticism – some of which is outlined below – there are two critical points growing out of the Draft Report that bear emphasis at the outset and should not be obscured by its flaws.
- First, the odds of a rupture of the Straits Pipelines are undeniably high. The Draft Report discusses those odds in mathematical/engineering terms that are somewhat obscure. *See* Draft Report at 2-105 – 2-108. However, at the July 6, 2017, meeting in Holt, Michigan, the project’s Chief Engineer stated clearly that, based on the figures set forth in the Draft Report, the odds of a spill from the Straits Pipelines in the next 35 years are not one in a million, or one in a thousand, or even one in a hundred. They are *one in sixty*.<sup>2</sup> This projection stands as an unacceptable threat to an iconic resource, especially when considered in conjunction with the catastrophic consequences that would follow from such a spill. And there exists substantial reason to believe that the actual risk is considerably higher than Dynamic Risk has stated it.

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<sup>2</sup> *See* Statements of James Mihell, P. Eng., at July 6, 2017, Information Meeting at Holt, Michigan, at 3:11:00–3:12:00. Available online at <https://mipetroleumpipelines.com/event/watch-video-july-6-public-information-session-holt>. Last visited July 29, 2017.

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- Second, decommissioning the Pipelines would best serve Michigan interests. In addition to its discussion of the risks posed by the Pipelines, the Draft Report contains two critical additional facts leading to this vitally important conclusion:

**Fact:** Michigan consumers and businesses rely on only a modest amount of the crude oil and natural gas liquids transported by Line 5, the significant majority of which is transported through the State and ends up in Canada or beyond.

**Fact:** Feasible alternatives for supplying the amount of Line 5 product and capacity relied on in Michigan are readily available, such that the Straits Pipelines can be decommissioned with little disruption or increased cost to Michigan consumers and businesses.

**Conclusion:** Thus, exposing the Straits of Mackinac to the risk of a catastrophic oil spill through the continued operation of the Straits Pipelines is not justified by significant interests of the State, the Tribes, or their citizens. That risk is instead being borne by the people of Michigan for the benefit of out-of-state interests.

- The Draft Report establishes the first of these facts in unambiguous terms: “The majority of Line 5 throughput is delivered to the Sarnia, Ontario terminal in Canada where it is then transported to refineries across eastern Canada and the U.S. . . . Of the NGLs transported on Line 5, less than 5% are delivered into Rapid River [in the Upper Peninsula]. Lewiston oil injections are also less than 5% of Line 5 current throughput and do not appear to be increasing.” Draft Report at 4-4 and 4-5. In other words, the Michigan portion of Line 5 is largely a thoroughfare for the transportation of product to the benefit of commercial, government, and consumer interests elsewhere, including, of course, to the benefit of Enbridge.
- The Draft Report establishes the second of these facts in discussing Alternative 6. *See id.* at 4-6 – 4-24. That Alternative considers the options that will be available to Michigan consumers and businesses to meet their energy and energy transport needs if the Straits Pipelines are decommissioned. The analysis confirms that there are feasible options presently available (1) for delivering an adequate supply of propane to Upper Peninsula customers by truck, *see id.* at 4-6 – 4-13; (2) for transporting Michigan-derived crude oil from Lewiston to refineries by truck, *id.* at 4-14 – 4-16; and (3) for providing significant alternative sources of crude oil for the Detroit and Toledo refineries, *id.* at 4-16 – 4-21.
- The Draft Report concludes that utilizing such alternatives will increase fuel prices for Michigan consumers, but only by modest amounts that fall well within the ambit of typical

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fluctuations in price. With respect to Upper Peninsula propane consumers, data in the Draft Report evidences that prices will increase by no more than 10 cents per gallon, whereas a “range of 10 cents/gal to 35 cents/gal . . . is similar to the year-to-year volatility experienced during normal seasonal fluctuations.” *Id.* at 4-13; *see also id.* at 4-6 (propane price variation between the winter of 2015-2016 and 2016-2017 was 10 to 25 cents per gallon).<sup>3</sup>

- With respect to gasoline and other distillates, the Draft Report concludes that “[i]n addition to crude oil supply from [elsewhere in] the Enbridge System, the Detroit and Toledo refineries would access additional supplies from the Mid-Valley Pipeline (total capacity of 240 kbbl/d) as well as through truck and rail deliveries,” *id.* at 4-17, with a projected increase in consumer prices of no more than 2.13 cents per gallon, *id.* at 4-20 – 4-21, an amount well within the range of normal fluctuations in cost. *See id.* at 4-21 (Table 4-5).
- The Draft Report, then, contains ample support for the conclusion that the Straits Pipelines can be decommissioned with little disruption and cost to the State, its citizens, and the Tribes. The continuing risk of an oil spill through the continued operation of the Straits Pipelines is simply not justified by Michigan interests.
- This should be a marquee finding in the Draft Report. It is instead omitted entirely from the executive summary and thereafter buried within the Draft Report’s voluminous and detailed focus on the viability of the other alternatives. Even there its implications are never acknowledged, much less developed with the clarity that they obviously warrant. Alternative 6 comes across in the Draft Report as an afterthought when it should be the centerpiece. This is because, as explained next, much of the Draft Report rests on a faulty premise.

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<sup>3</sup> The Draft Report explores four alternative sources of propane for Upper Peninsula consumers. *See id.* at 4-6 – 4-13. Trucking from Superior, Wisconsin, is the least expensive of these, and according to the Draft Report would result in an additional cost of 10 cents per gallon. *Id.* at 4-12 – 4-13. While the other options explored would be more costly (up to an additional 35 cents per gallon), the Draft Report provides no indication that the Superior option is infeasible, and hence 10 cents per gallon is the realistic upper bound of impact. Indeed, the Tribes understand that the State may receive comments from other sources indicating that even this figure is too high. The Tribes, of course, have many members living in the Upper Peninsula. They have no interest in seeing the costs of alternative propane supplies understated. But neither do they have an interest in seeing them overstated in a manner that may distort a proper assessment of the pipeline alternatives.



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## Key Shortcomings in the Draft Report

### A. The Faulty Premise

- The Draft Report focuses the bulk of its analysis on Alternatives 1-5. In doing so, it does not assess the extent to which each of those alternatives would serve *Michigan* interests (including the interests of the State, its citizens, and the Michigan Tribes), as provided for in the RFP, and as was the expectation for the Draft Report of the public generally and the Tribes specifically.
- Instead, the Draft Report imposes on each of those Alternatives the limitation that they must maintain undiminished Enbridge's existing Line 5 product flow between Superior, Wisconsin, and the refineries in Sarnia, Ontario. *See, e.g.*, Draft Report at TS-3 ("For this study, the alternatives described are designed to provide equivalent capacity and deliveries to that of the existing Line 5."); *id.* at 6-1 ("Alternative 1 considers the construction of one or more new pipelines . . . to transport the volume of petroleum products that are currently transported by Enbridge Line 5 from its terminal at Superior, Wisconsin to its terminus in Sarnia, Ontario" (emphasis added)); *id.* at 5-1 (same for Alternative 2 (use of existing pipeline infrastructure)); *id.* at 7-1 (same for Alternative 3 (use of alternative transportation methods)). By contrast, the Draft Report evaluates Alternative 6 with the requirement of replicating the amount of Line 5 flow in fact relied upon by Michigan citizens and businesses. *See id.* at 4-6 – 4-24. In the Final Report, that should be the measure by which all of the alternatives are framed and evaluated.
- The Draft Report nowhere provides an explanation as to why the commercial needs of Enbridge should serve as the measure for evaluating the viability of all but one of the proposed alternatives to the Straits Pipelines. The absence of any such explanation diminishes the potential of the Draft Report to be used as a tool for reaching consensus regarding the best interests of Michigan, its citizens, and the Tribes with respect to the future of the Straits Pipelines.
- The Draft Report's approach could lead a casual reader to conflate those critical public interests with Enbridge's private interest in maintaining Line 5's product flow undiminished. But the interests of Michigan and those of Enbridge are not co-extensive. As noted, Line 5 largely carries its products through Michigan to the benefit of commercial, government and consumer interests elsewhere. *See id.* at 4-4 and 4-5 (stating that "[t]he majority of Line 5 throughput is delivered to . . . refineries across eastern Canada and the U.S.," and "less than 5%" of Line 5 NGLs go to the Upper Peninsula, and "Lewiston oil injections are also less than 5% of Line 5 current throughput"). The Draft Report does not reconcile that fundamental fact with its insistence that viable alternatives to the Straits Pipelines must replicate 100% of Line 5's throughput unabated.

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- The Draft Report's unexplained solicitude for Enbridge's commercial needs over Michigan-specific interests leads to a skewed focus on, and favoring of, alternatives that best serve Enbridge's needs. Perhaps the starkest example comes with the Draft Report's summary dismissal of Alternative 2, which was supposed to address the use of existing pipeline infrastructure. Instead, the Draft Report summarily dispenses with this option after concluding that the existing infrastructure cannot convey all 540,000 barrels of oil per day presently transported by Line 5. *See id.* at 5-1 – 5-4 (discussing same); *see also id.* at MS-2 (“[T]he option of using existing pipeline infrastructure was removed from further detailed analysis.”).
- The Report discards this alternative from further consideration despite acknowledging that there presently exists significant excess capacity on Enbridge's existing Line 78, which extends from Griffith, Indiana (near Chicago), across southern Michigan, to Sarnia, *see id.* at 5-2, and despite further acknowledging that the Mid-Valley Pipeline could supply much of the remaining needs of the Detroit and Toledo refineries, *id.* at 4-7. An analysis focused on Michigan interests would have fleshed out these facts in detail. Instead, because of its focus on non-Michigan concerns, the Draft Report fails to complete the analysis.
- Fortunately, while some calculations remain to be done, much of the analysis is, as canvassed above, already contained in the discussion of Alternative 6 (decommissioning). *See id.* at 4-6 – 4-22. The Final Report should accordingly be able to address the ability of the existing pipeline infrastructure to satisfy Michigan needs without having to re-invent the wheel.

B. Failure to Properly Account for Costs to Michigan and the Tribes

- While focusing on the commercial needs of Enbridge, the Draft Report fails to properly consider the costs of the various alternatives to Michigan's citizens generally and to the Tribes specifically. For example, the Draft Report acknowledges that it “does not provide a separate valuation estimate for subsistence, commercial or cultural values associated with the use of resources by tribes.” *Id.* at 1-9. As a result, while Tribal interests, including Tribal treaty rights, are mentioned at occasional junctures in the Draft Report, the costs associated with alternatives affecting tribal interests “are not necessarily fully accounted for,” as acknowledged (in what can only be characterized as a significant understatement) by the project's economist at the July 6, 2017, Holt presentation.<sup>4</sup>
- These omissions are evident in the Draft Report's conclusion that the total cost of an oil spill in the Straits of Mackinac – which, in addition to all the other costs for Michigan and its citizens, would almost certainly wipe out a significant swath of the Tribes' treaty-guaranteed fishing, hunting and gathering activities for years – would be no more than 103-128 million

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<sup>4</sup> Statements of Jack Ruitenbeek, PhD, at July 6, 2017, Information Meeting at Holt, Michigan, at 3:46:00–3:47:30. Available online at <https://mipetroleumpipelines.com/event/watch-video-july-6-public-information-session-holt>. Last visited July 29, 2017.

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dollars (with an environmental damages component of 62-76 million dollars). *See id.* at 2-104 – 2-105. These are stunningly low figures, and the Draft Report makes no attempt to reconcile them with the fact that the Marshall oil spill has, to date, resulted in 1.2 billion dollars in remediation and other costs due to its impact on the Kalamazoo River and surrounding communities.<sup>5</sup>

- The Tribes understand that the State will be receiving detailed comments from other sources about the Draft Report’s failure to model worst-case spill scenarios, despite the State’s explicit instruction that it do so, and regarding other flaws in the Draft Report’s modeling and costs analysis. The Tribes will not duplicate those arguments here but will simply underscore that the Draft Report’s analysis vastly understates the effects of a Straits spill on Tribal economies, cultures, and ways of life.
- The on- and off-reservation fishing, hunting, and gathering rights retained by a number of the undersigned Tribes in treaties with the United States were of vital importance to them as they ceded vast swaths of land to the government in the 19th century. The exercise of those rights was essential to their very survival, as well as to the maintenance of a way of life and cultural practices dating back to time immemorial. In *United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), the court explained that in negotiating the 1836 Treaty of Washington, 7 Stat. 491, the Tribes reserved the right “to hunt, fish, gather fruits of the land and use all land and water resources of the ceded area . . . [i]ndefinitely,” *id.* at 236, and that this right “was extremely important to the Indians” because it meant that “they could continue living the way they had been living,” *id.* at 235. With respect to fishing rights in particular, “the vital right to fish in the Great Lakes was something that the Indians understood would not be taken from them[.]” *Id.* at 253. “[T]he Indians were too heavily dependent upon fish as a food source and for their livelihood to ever relinquish this right.” *Id.* at 259.
- The Tribes’ reliance on their ancient fisheries, including in particular their fisheries in the Straits of Mackinac, is well documented. In *United States v. Michigan*, the court found that “[t]hroughout the period from first contact to the 1830’s [when the Treaty of Washington was signed], missionaries, explorers, traders, and military and governmental officials wrote of the Indian gill net fishery in the Great Lakes and of its importance to the Indian inhabitants. For example, the Frenchman Joutel wrote [a] detailed description of Indian gill netting at the Straits of Mackinac in 1687.” *Id.* at 222. The court further found that “[s]ubsistence fishing continued to be tremendously important to the Indians of the treaty area in the 1830’s. The introduction of the market economy, the fur trade and the dependence of the Indians on trade goods did not alter the subsistence dependence of Indians on the fishery; to the contrary, as

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<sup>5</sup> *See* Garrett Ellison, MLive.com, *New price tag for Kalamazoo River oil spill cleanup: Enbridge says \$1.21 billion*, May 20, 2016. Available online at: [http://www.mlive.com/news/grand-rapids/index.ssf/2014/11/2010\\_oil\\_spill\\_cost\\_enbridge\\_1.html](http://www.mlive.com/news/grand-rapids/index.ssf/2014/11/2010_oil_spill_cost_enbridge_1.html). Last visited July 30, 2017.

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Fitting reported in his 'Patterns of Acculturation at the Straits of Mackinac,' those factors actually [i]ncreased and amplified the importance of fishing." *Id.* at 224.

- As these passages suggest, firsthand accounts of the importance of the fisheries to the Tribes, including in the Straits of Mackinac in particular, abound. Those accounts make clear that it was the abundance of fish in the Straits that had led a number of the Michigan Tribes to reside there. The explorer Antoine de la Mothe Cadillac authored one of the most poignant of these in describing the Ottawa fisheries at Mackinac circa 1695:

The great abundance of fish and the convenience of the place for fishing have caused the Indians to make a fixed settlement in those parts. It is a daily manna, which never fails; there is no family which does not catch sufficient fish during the course of the year for its subsistence. Moreover, better fish can not be eaten and they are bathed and nourished in the purest water, the clearest and the most pellucid you could see anywhere.

W. Vernon Kinietz, *The Indians of the Western Great Lakes: 1615-1760* (1965), at 239-40.

- And it was this same abundance of fish that led the Tribes to insist, when they ceded their lands, that their treaty reservations be located near the Straits and adjacent waters. As the court explained in *United States v. Michigan*:

All Indians of the Upper Great Lakes, including the Ottawa and Chippewa, were fishing peoples. The settlement patterns of native peoples of the Upper Great Lakes, including the treaty Indians in the case at bar, were strongly influenced by available resources, especially fish. It is no mere coincidence that the [1836 reservations] are all located on the Great Lakes and all adjacent to important fishing grounds. It is also noteworthy that most major archaeological sites in the Upper Great Lakes are near or within [the 1836 reservations]. In order to reach a conclusion that the Indians were not dependent upon this valuable fishery resource, the court would have to ignore hundreds of years of recorded testimony and thousands of years of prehistoric information.

471 F. Supp. at 256.

- In the years since Cadillac wrote his account, and since the treaties were signed, much has changed. The waters, the fisheries, and the game have all suffered tremendously. But the Tribes have fought vigorously to retain their way of life and to restore those natural resources to some small measure of their former bounty. And the State, in recognition of the tremendous importance of those resources to all Michigan citizens, and to the very identity of the State, has worked in partnership with the Tribes towards that end.

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- The continuing importance of the Straits to the Tribes cannot be gainsaid. The Tribes have continued to reside and to maintain significant commercial and subsistence fisheries there. As a tribal Great Lakes fishery biologist recently declared:

Northern Lake Michigan and Northern Lake Huron are very productive areas for lake whitefish [the most important commercial species] with biomass levels typically exceeding 10 million pounds annually. . . . Lake whitefish harvests from Northern Lake Michigan and Northern Lake Huron made up 37% to 76% of the total annual [Chippewa Ottawa Resource Authority] commercial lake whitefish harvest from the 1836 ceded waters and averaged 58% during 1986-2014.”<sup>6</sup>

- In addition, to compensate for shortfalls in the fisheries from historic levels, the Tribes have invested enormous amounts of time, effort, and resources to develop other aspects of their economies, including tourism-related activities, that are likewise predicated on the health of the Straits.
- The Draft Report mentions little of this, and the paltry figure it attaches to the physical and cultural carnage that would result from an oil spill in the Straits fails to adequately capture or respect the importance of the Straits to the history and very identity of the Tribes and the State. It may well be that the central role that healthy Straits have played and continue to play in the life of the Michigan Tribes and their non-Indian neighbors cannot be adequately quantified. If Dynamic Risk’s models do not allow for the monetization of that value it should forthrightly acknowledge that fact in its Final Report and eliminate any implication that it has fully captured the true cost of the harm that would result from a rupture of the Straits Pipelines.

C. Flawed Emphasis on Alternatives 5 (Status Quo) and 4 (Tunneling and Trenching)

- Ultimately, as a result of its unexplained focus on the commercial needs of Enbridge, the Report leaves the impression that the most prudent and reasonable alternative is to maintain Line 5 in place (Alternative 5), potentially with a revised Straits crossing via trench or tunnel (Alternative 4). But the Draft Report does not identify any interests of the State, its citizens, or the Tribes that would be advanced by these options.
- To the contrary, it is clear that Tribal interests, along with closely related interests of Michigan and its non-Indian citizens, have not been fully accounted for in the Draft Report’s favorable discussion of the possibility of trenching or tunneling the Straits Pipelines. The Draft Report acknowledges that both trenching and tunneling will have significant

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<sup>6</sup> See Attachment A (Declaration of Mark P. Ebener, Great Lakes fishery biologist for Chippewa Ottawa Resource Authority (“Ebener Decl.”) at 4. Filed in *National Wildlife Federation v. Administrator of PHMSA*, Case No. 2:16-cv-11727, United States District Court, E.D. Mich. (July 14, 2016)).

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socioeconomic impacts in the Straits region. *See* Draft Report at 3-17 – 3-20 and Appendix Q. Trenching, which would not eliminate the risks of an oil spill posed by the Straits Pipelines,

will require disruption of water traffic through the Straits. The Straits is an important link between Lake Michigan and Lake Huron. Important to recreational boating and fishing, it is a fundamental part of the tourism attraction to the region. It is also part of the area's tribal treaty waters, and important for tribal commercial and subsistence fisheries. The impacts of any disruption to water traffic needs careful assessment with area tribes, the MDNR Fisheries Division, and others affected by lake traffic in the area.

*Id.* at 3-20. In addition, "[a]djacent shoreline areas will be temporarily transformed into worksites for materials delivery and machinery installation." *Id.* at 3-17.

- Tunneling (projected to extend over at least a 27-month period) will involve, among other things, "considerable disturbance on the shoreline at both ends of the tunnel." *Id.* "Tunneling operations in particular require the extraction and trucking of large amounts of rock and soil; dust and noise will impact community residents and visitors." *Id.* at 3-20. And either of the proposed tunneling methods will quite predictably have significant disruptive effects on the bottomlands and on water quality. *See* Appendix E.3 for a description of the tunnel boring and drill and blast methods.
- Even on the face of the Draft Report, then, and without anything approaching a full exploration of the issues, it is clear that trenching or tunneling the Straits Pipelines will have significant, negative impacts on the Tribes' treaty-protected activities. Any degradation in water quality will threaten the already fragile fisheries. Moreover, the significant shoreline disturbances mentioned in the Draft Report are of great concern given that "lake whitefish spawning is concentrated in shallow rock and gravel areas adjacent to the shorelines," Ebener Decl. at 3, that "young lake whitefish occupy very shallow sandy areas less than 5 ft. deep adjacent to the spawning shoals," *id.* at 4, and that lake trout also "spawn to a lesser extent in shallow rocky areas along the shoreline of both [lakes]," *id.* at 5.
- Tunneling or trenching could also result in major disturbances to the waterfowl, migratory birds, aquatic furbearers, and other resources to which Tribal treaty rights attach, and to both the water and shoreline sites (potentially including Tribal trust and reservation lands) that Tribal members use to gain access to their treaty resources. They would further render off-limits additional portions of the bottomlands on which the Tribes have set their nets since time immemorial.
- The Final Report should properly reflect the vast disruption that would be entailed by tunneling or trenching and should make clear that these options are unnecessary to satisfy

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any significant interests of the State, the Tribes, or their citizens, but would instead be undertaken largely for the benefit of out-of-state interests.

D. Failure to Conduct an Apples-to-Apples Comparison of Risk

- The Draft Report's comparison of the risks presented by the various Alternatives is summarized at Table ES-2, which is found at page 23 of the Technical Summary (TS-23). Even a cursory glance at the Table suggests that something is amiss. According to the Table, the total economic risk of a spill from the utilization of a state-of-the-art pipeline constructed along the existing southern route (Alternative 1), which largely avoids exposure to the Great Lakes, is 46.26 times higher than the total economic risk of maintaining the Straits Pipelines in place, while the monetized environmental risk is 33.77 times higher (the numbers are even starker for the tunneling or trenching options). This is impossible to fathom, given that the pipeline industry in general, and the Draft Report itself, consistently tout the reduction in risk resulting from continual technological improvements in pipeline design, construction and installation, *see, e.g.*, Draft Report at 3-1, 3-6, 3-25, 3-27, and 6-3 – 6-4, and given the extremely sensitive nature of the Straits crossing.
- The explanation lies in another fundamental flaw in the Draft Report – its failure to conduct an apples-to-apples comparison of risk. Table ES-2 summarizes the Draft Report's assessment of the relative risks presented by the 4.5 mile Straits crossing against those presented by the *entire* 762 miles of a new southern pipeline (226 miles of which would fall in Michigan). *See* TS-23 (Table ES-2); *see also* 6-14 ("The failure likelihood component of the risk expression" for the southern route applies to "the segment of pipeline that would be used to bypass the Straits segment of Line 5."). No valid reason is provided for such an unbalanced comparison, and none exists. If the Straits crossing remains in place, so too will the rest of Line 5, and an accurate assessment of relative risk would therefore compare the risks and consequences of a spill along Line 5 in its entirety with those related to the replacement route. Or, to focus more precisely on Michigan interests, an accurate assessment would compare the risks and consequences of a rupture along Line 5 that could affect Michigan lands and waters with those associated with the replacement route. The Final Report should correct what is otherwise a highly misleading comparison of risk.
- The Draft Report likewise overstates the consequences of a southern route spill compared to a spill at the Straits. The former are calculated using incident data from 2010-2016, which sweeps in the disastrous Enbridge spills at Marshall and near Romeoville, Illinois in 2010. *See* Draft Report at 6-14 – 6-16. By contrast, those spills are nowhere factored into the Draft Report's assessment of the consequences of a Straits spill. The illogic of this is apparent. The results of failures of Enbridge's older pipelines are used to skew the risk analysis in favor of maintaining another aged pipeline under the Straits as opposed to constructing a new, state-of-the-art pipeline in an existing right-of-way far removed from the Straits. Dynamic Risk should rethink its approach to its comparison of relative risks, which at present is not defensible.

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### **The State's Obligation to Act**

- The foregoing comments, and others submitted to the State, including by members of the State's own Pipeline Safety Advisory Board, reflect significant shortcomings in the Draft Report. Dynamic Risk can and should fix those flaws. But regardless of whether it does, the Draft Report contains ample evidence establishing the State's obligations to decommission the Straits Pipelines under two cardinal, and in this context closely related, legal doctrines.

### The Public Trust Doctrine

- The Draft Report's focus on the commercial needs of Enbridge is not simply deficient as a matter of fact and policy, but also as a matter of law. For whatever may be Enbridge's private interests, or the interests of other jurisdictions, in maintaining the Straits Pipelines (whether in their present or in tunneled or trenched form), the interests of the people of Michigan and of the Tribes in protecting the Straits and its resources are paramount under the public trust doctrine.
- Pursuant to that doctrine, certain natural resources held in common by the public constitute "the public trust." These resources specifically include "the waters of the Great Lakes and their submerged lands[.]" *Glass v. Goeckel*, 473 Mich. 667, 694 (2005). The State, as trustee, has an affirmative obligation to protect such public resources against impairment. *See id.* That obligation is enshrined in the Michigan Constitution. *See* Mich. Const. art. IV, § 52. As the Michigan Attorney General, citing seminal authority from the United States Supreme Court, explained in 2004, under the public trust doctrine the State has "not only the authority *but an affirmative obligation* to protect the public interest in navigable waters." Mich. Op. Att'y Gen. 7162 (2004), 2004 Mich. AG LEXIS 18, at \*5 (citing *Ill. Cent. R.R. Co. v. Illinois*, 146 U.S. 387 (1892)) (emphasis added).
- Because of the paramount nature of the public's rights in the Straits, the 1953 easement presents no obstacle to the State's full exercise of its public trust authority with respect to the Straits. Indeed, the State did not surrender even a fraction of that authority – or the affirmative duties that underpin it – when it granted the easement. "The state, as sovereign, cannot relinquish this duty to preserve public rights in the Great Lakes and their natural resources." *Glass*, 473 Mich. at 679. To the contrary, the easement was issued fully "subject to the public trust" at its inception. *Id.* In other words, a state's conveyance of property rights "to private parties leaves intact public rights in the lake and its submerged land. . . . Under the public trust doctrine, the sovereign never had the power to eliminate those rights, so any subsequent conveyances . . . remain subject to those public rights." *Id.* at 679, 681 (emphasis added). *See also, e.g., Nedtweg v. Wallace*, 237 Mich. 14, 17 (1927) (stating that public trust "is an inalienable obligation of sovereignty" and "[t]he State may not, by grant, surrender such public rights" in favor of private interests). These are not mere academic concepts. As the Michigan Supreme Court has recently explained, "the public trust doctrine is alive and well in Michigan[.]" *Glass*, 473 Mich. at 681.



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- Accordingly, the State does *not* need to find a violation of the 1953 easement to revoke it and order the decommissioning of the Straits Pipelines. Because the easement was issued “subject to the public trust,” *id.* at 679, it issued subject to the understanding that the State could unilaterally revoke it based on subsequent understandings (as opposed to those prevailing in 1953) of the threat to the public trust posed by the Pipelines. As the United States Supreme Court, in a seminal public trust decision oft-cited by the Michigan Supreme Court, has explained, “[t]here can be no irrevocable contract in a conveyance of property by a [sovereign] in disregard of [the] public trust[.]” *Ill. Cent. R.R. Co.*, 146 U.S. at 460. Thus, any grant of property rights (*e.g.*, an easement) in public trust resources

is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time. . . . [T]he power to resume the trust whenever the State judges best is . . . incontrovertible.

*Id.* at 455. *See also id.* at 461-62 (recognizing power of the state under public trust doctrine “to resume control of the resources and property” based on subsequent “consideration of public policy” and stating that state’s power to do so “is unquestionable”).<sup>7</sup>

- Furthermore, the State not only has the authority under the public trust doctrine to revoke the easement, it has the *duty* to do so. Attorney General Bill Schuette has stated that “[c]ertainly the Straits Pipelines would not be built today[.]”<sup>8</sup> That is unquestionably true. Laying private crude oil pipelines in the Straits of Mackinac (of all places) for the primary benefit of out-of-state commercial interests simply cannot, based on what is known today, be squared with Michigan’s paramount obligations to safeguard the public trust in the Straits and surrounding lands and waters. If the State would not permit the Straits Pipelines to be installed today because of their threat to the public trust, there exists no basis – and indeed *no authority* – to acquiesce in their continued operation. Again, the State’s public trust obligations are affirmative. As the Michigan Supreme Court has made clear, “the state . . . may permit only those private uses that do not interfere with . . . the public trust.” *Glass*, 473 Mich. at 694 (emphasis added). The trenching or tunneling of the Straits or the maintenance of the existing pipelines – in light of the known risks of catastrophic consequences identified in the Draft Report, and the known disruption that trenching or tunneling would cause – are private uses that would unquestionably interfere with public rights in that iconic resource. The Draft Report identifies no Michigan-based interests that would purport to justify such interference.

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<sup>7</sup> The State would not be subject to a claim for compensation under the Takings Clause if it revoked the Straits easement in absence of a violation. *See, e.g., Hilt v. Weber*, 252 Mich. 198, 225 (1930) (where private property rights are withdrawn by a state for public use, “compensation must be made, unless the use has a real and substantial relation to a paramount trust purpose.” (citing *Illinois Central*) (emphasis added)).

<sup>8</sup> Public statement made on July 14, 2015. Available online at <http://www.michigan.gov/ag/0,4534,7-164-46849-359349--,00.html>. Last visited July 30, 2017.

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### Tribal Treaty Rights and the Supremacy Clause

- As discussed above, the Tribes have well-established treaty rights to fish, hunt, and gather in the lands and waters surrounding the Straits of Mackinac, and the vitality of those rights depends on the health and quality of those resources. The ever-present risk of a spill from the Straits Pipelines, and the destruction that would be caused by the tunneling or trenching alternatives, pose unacceptable threats to those rights.
- Similar to its obligations under the public trust doctrine to treat certain natural resources as “paramount” and to protect them against impairment, the State is firmly bound under the Supremacy Clause of the United States Constitution, art. VI, cl. 2, to honor the Tribes’ treaty rights and to refrain from impairing, or from permitting the impairment of, the resources to which those rights attach. “[A] treaty made under the authority of the United States becomes the supreme law of the land . . . [and] maintains the same status as a federal statute[.]” *United States v. Michigan*, 471 F. Supp. at 217. *See also Menominee Tribe of Indians v. United States*, 391 U.S. 404, 411 n.12 (1968) (stating that treaties are “the supreme law of the land” and that rights “guaranteed to the tribe by the Federal Government [are not] subject” to abrogation by a state (internal quotation marks omitted)). That States may not act in derogation of rights guaranteed by Indian treaties is accordingly a “fundamental principle of federal constitutional law,” 471 F. Supp. at 265, and it is one that the State of Michigan has respected for decades.
- In the case of the Straits Pipelines, the State’s paramount public trust obligations and its constitutional duty to refrain from impairing the Tribes’ treaty rights are firmly aligned, and both point to decommissioning the Pipelines. Indeed, the State and the Tribes have cooperated extensively in recent years in efforts to protect and enhance the fish, game, and plant-based resources on which Tribal members and Michigan’s non-Indian citizens alike depend for subsistence, commercial, recreational, and cultural purposes. Their shared recognition of the incomparable value of such resources should underpin the decisions made by the State about the future of the Straits Pipelines.

\* \* \*

The State of Michigan – with wisdom and courage commensurate with its paramount public trust and treaty obligations and its history of environmental leadership – should decommission the Straits Pipelines. When the State determines to do so, the Tribes and their members will stand shoulder-to-shoulder with the State and our non-Indian neighbors in defense of our shared legacy.

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/s/ Levi Carrick, Sr.

Levi Carrick, Sr., President  
Bay Mills Indian Community  
12140 W. Lakeshore Drive  
Brimley, MI 49715

/s/ Kenneth Meshigaud

Kenneth Meshigaud, Tribal Chairperson  
Hannahville Indian Community  
N14911 Hannahville B1 Road  
Wilson, MI 49896

/s/ James Williams, Jr.

James Williams, Jr., Tribal Chairman  
Lac Vieux Desert Band of Lake Superior  
Chippewa Indians  
East 23968 Pow Wow Trail  
Watersmeet, MI 49969

/s/ Regina Gasco-Bentley

Regina Gasco-Bentley, Tribal Chair  
Little Traverse Bay Bands of Odawa Indians  
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Harbor Springs, MI 49740

/s/ Jamie Stuck

Jamie Stuck, Tribal Chairman  
Nottawaseppi Huron Band of  
Potawatomi Indians  
1485 Mno-Bmadzewen Way  
Fulton, MI 49052

/s/ Frank J. Cloutier

Frank J. Cloutier, Tribal Chief  
Saginaw Chippewa Indian Tribe of Michigan  
707 E. Broadway  
Mt. Pleasant, MI 48858

/s/ Thurlow "Sam" McClellan

Thurlow "Sam" McClellan, Tribal Chairman  
Grand Traverse Band of Ottawa and  
Chippewa Indians  
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/s/ Warren C. Swartz, Jr.

Warren C. Swartz, Jr., President  
Keweenaw Bay Indian Community  
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Baraga, MI 49908

/s/ Larry Romanelli

Larry Romanelli, Tribal Ogema  
Little River Band of Ottawa Indians  
2608 Government Center Drive  
Manistee, MI 49660

/s/ Scott Sprague

Scott Sprague, Tribal Chairman  
Match-e-be-nash-she-wish Band of  
Pottawatomis Indians of Michigan  
2782 Mission Drive  
Shelbyville, MI 49344

/s/ John Warren

John Warren, Chairman  
Pokagon Band of Potawatomi Indians  
58620 Sink Road  
Dowagiac, MI 49047

/s/ Aaron A. Payment

Aaron A. Payment, Tribal Chairperson  
Sault Ste. Marie Tribe of Chippewa Indians  
523 Ashmun Street  
Sault Ste. Marie, MI 49783

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cc: David Nyberg, Tribal Liaison, Governor's Marquette Office  
Matthew Goddard, Energy Liaison, MDEQ  
Teresa Seidel, MDEQ  
S. Peter Manning, MDAG  
Robert Reichel, MDAG  
Trevor VanDyke, MDNR

# EXHIBIT BMC-4



## Bay Mills Indian Community

12140 West Lakeshore Drive  
Brimley, Michigan 49715  
(906) 248-3241 Fax-(906) 248-3283

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Dear Governor Snyder,

I am writing on behalf of the Bay Mills Indian Community ("Bay Mills") regarding the State of Michigan's recent agreement with Enbridge Energy, LLP ("Enbridge") regarding the operation of the Line 5 Pipeline beneath the Straits of Mackinac.

Bay Mills is concerned about the process used to reach this agreement, its potential to allow the Line 5 Pipeline to continue to operate beneath the Straits of Mackinac, and the risks it poses for our Tribe's right to fish in the Great Lakes under the 1836 Treaty of Washington.

### **Background**

Bay Mills is one of the signatories to the 1836 Treaty of Washington, which ceded territory to the United States for the creation of the State of Michigan. In exchange for the agreement to cede the territory to the United States, the Tribes reserved the right to hunt and fish throughout that territory – including in the Great Lakes (and the Straits of Mackinac).

In 1953, the State of Michigan granted an easement to the Lakehead Pipe Line Company to operate an oil and gas pipeline beneath the Straits of Mackinac. To the best of our knowledge, neither the Bay Mills Indian Community nor any other signatory to the 1836 Treaty of Washington was consulted about the decision to allow the pipeline to be constructed on the lakebed beneath the Straits. Enbridge has acquired ownership of that pipeline, which may include interest in the easement beneath the Straits.

In 1971, Michigan conservation officers cited Bay Mills tribal member Albert "Abe" LeBlanc for violating state fishing regulations. Several years later, in 1976, the Michigan Supreme Court held that Bay Mills, along with several other tribes, had retained the right to fish in the Great Lakes pursuant to the 1836 Treaty of Washington. The United States brought a lawsuit against the State of Michigan on behalf of the Tribes to enforce that treaty right; and, the United States District Court for the Western District of Michigan upheld the Tribes' treaty rights in a famous 1979 decision now known as the "Fox Decision."

In 1985, the State of Michigan and the signatory tribes to the 1836 Treaty entered into a consent judgment regarding management of the Great Lakes fishery. That agreement affirmed that the State and the Tribes must work together to protect the Tribes' treaty fishing rights and manage the Great Lakes fishery in a manner that respected tribal and state interests. The Tribes and the State have worked together to protect the Great Lakes ever since.

In 2000, the State and the Tribes negotiated a second iteration of the consent judgment, which was intended to last until August 2020. We have recently begun the work necessary to negotiate a new consent judgment in the ongoing litigation between the State and the Tribes under the Fox Decision.

In 2010, Enbridge's Line 6 pipeline ruptured in a tributary of the Kalamazoo River, causing more than 1.2 million gallons of oil to spill into Michigan's waterways. It was the largest on-shore oil spill in the history of the United States. Since that time, Enbridge has been subjected to closer scrutiny of its pipelines - including the Line 5 Pipeline beneath the Straits of Mackinac. That increased scrutiny has revealed a number of serious safety concerns with the Line 5 Pipeline, which include concerns about Enbridge's safety record and practice of failing to disclose important information.

### **Discussion**

There is no doubt that Bay Mills, along with several other tribes, has a protected legal interest in the fishery resource in the upper Great Lakes - including in the waters of the Straits of Mackinac under the 1836 Treaty of Washington. Bay Mills has worked cooperatively with the State to manage the Great Lakes fishery for the past thirty years. Bay Mills, the Chippewa Ottawa Resource Authority, and the other tribal parties to the 1836 Treaty have expressed grave concerns about the continued operation of the Line 5 Pipeline beneath the Straits of Mackinac; and, we have offered to work with the State to find ways to address those concerns.

With this long history of a cooperative relationship, we were disappointed to learn that the State had worked to come to terms with Enbridge that allow them to resolve this matter without further consultation with Bay Mills or any of the other tribes that have demonstrated an interest in this issue.

Neither Bay Mills nor any of the other 1836 Treaty Tribes were aware that the State was negotiating an agreement with Enbridge regarding the Line 5 Pipeline, despite the State's assurances that it would consult with the Tribes regarding the future of the Line 5 Pipeline. The State's new agreement with Enbridge goes so far as to assert that it is intended to protect tribal interests:

WHEREAS, the State and Enbridge recognize that the Straits Crossing and the St. Clair River Crossing are located in the Great Lakes and connecting waters that include and are in proximity to unique ecological and natural resources that are of vital significance to the State and its residents, ***to tribal governments and their members***, to public water supplies, and to the regional economy.... (emphasis added)

Despite the acknowledgment that Enbridge's Line 5 Pipeline affects "resources that are of vital significance...to tribal governments and their members," tribal governments were not made aware of the negotiations, or provided with an opportunity to help craft its terms.



Bay Mills, along with its fellow treaty tribes, continues to urge for the decommissioning of the Line 5 Pipeline beneath the Straits. Nevertheless, our position does not mean that we intend to cede our interest (and legal right) in ensuring that the operation of the Line 5 Pipeline does not destroy resources that are so fundamental to our culture and economy.

Bay Mills relies heavily upon commercial fishing and tourism to support our local economy. Our treaty fishery accounts for 100 direct and indirect jobs. Our tribally-licensed fishermen supply markets across northern Michigan; they also purchase fuel, goods, and services from small businesses across the region. Our continued livelihood depends upon successful cooperative management of the Great Lakes with the State of Michigan. The State's recent agreement with Enbridge does not embody cooperative management.

Moreover, our regional economy is heavily dependent upon tourism and outdoor recreation. A rupture of the Line 5 Pipeline, whether beneath the Straits or at other locations in our treaty-ceded territory, would be catastrophic – causing lasting damage to natural resources that drive our regional economy. In addition, a spill (and corresponding cleanup and repair work) could affect areas that have significant cultural and religious value.

### **Conclusion**

Bay Mills does not concede that the Governor had the legal authority to enter into this agreement with Enbridge. Nevertheless, we want to continue to work together to find a solution to our concerns. To that end, Bay Mills is urging the State to take the following steps to acknowledge and protect tribal treaty rights.

1. Meet directly with the 1836 Treaty Tribes to explain how the State's November 27, 2017 Agreement with Enbridge affects cooperative management of the Great Lakes fishery under the 1836 Treaty of Washington;
2. Modify the November 27, 2017 Agreement with Enbridge to ensure that the 1836 Treaty Tribes have the ability to receive and review safety information supplied by Enbridge, and to participate in the enforcement of the Agreement; and,
3. Modify the November 27, 2017 Agreement to acknowledge (a) the existing consent decree between the State of Michigan and the 1836 Treaty Tribes, and (b) the State's paramount obligation to abide by that decree, and the treaty rights recognized therein, in any State decisions and enforcement related to the Line 5 Pipeline.

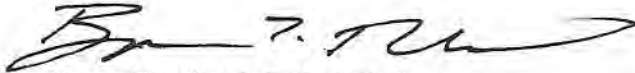
If the State is unable or unwilling to modify its November 27, 2017 Agreement with Enbridge, I am requesting that the State enter into a separate agreement with the 1836 Treaty Tribes to ensure that the 1836 Treaty Tribes have the ability to receive and review safety information supplied by Enbridge relative to the Line 5 Pipeline's operation within the ceded territory. Bay Mills also wants to ensure that all State decisions related to the Line 5 Pipeline are formulated and implemented in a manner that protects our legal



interests, which include both treaty and cultural rights, and that for so long as it remains in place, the Pipeline is operated and maintained in such a way as to safeguard those rights to the maximum extent possible.

Bay Mills has enjoyed a positive relationship with the State over the years, even when seeking to resolve areas of disagreement. I sincerely hope that will be the case here. Thank you for your consideration, and I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Newland", written in a cursive style.

Bryan Newland, Tribal Chairman  
Bay Mills Indian Community

Cc: Grand Traverse Band of Ottawa and Chippewa Indians  
Little River Band of Ottawa Indians  
Little Traverse Bay Bands of Odawa Indians  
Sault Ste. Marie Tribe of Chippewa Indians

# EXHIBIT BMC-5



## Bay Mills Indian Community

12140 West Lakeshore Drive  
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(906) 248-3241 Fax-(906) 248-3283



May 10, 2019

Hon. Gretchen Whitmer, Governor  
State of Michigan  
George W. Romney Building  
111 South Capitol Avenue  
Lansing, Michigan 48909

**Re: Operation and Future of Enbridge's Line 5 Pipeline**

Dear Governor Whitmer:

I am writing on behalf of the Bay Mills Indian Community to transmit its response to your solicitation of tribal comments and views on the present and future operation of Enbridge's Line 5 within the State of Michigan.

I am grateful that your Administration has pledged to consult with Bay Mills, and other sovereign tribal nations, on a government-to-government basis on the development of the State of Michigan's approach to dealing with the Line 5 Pipeline. As a sovereign government with responsibility for managing and protecting the Great Lakes, the Tribe believes that a government-to-government approach is important to develop policies that account for our respective sovereign interests.

The Tribe's positions, comments, questions and recommendations are attached to this letter. In addition, you are invited to visit the Straits of Mackinac with representatives of Bay Mills and other Tribes to observe, first hand, its importance to our way of life.

Bay Mills has enjoyed a positive relationship with the State over the years, even when seeking to resolve areas of disagreement. I sincerely hope that will be the case here. I am grateful for your invitation to provide our views, and am hopeful that this process will be more respectful of our sovereign interests than previous actions related to Line 5. We look forward to your response.

Sincerely,

*Bryan T. Newland*  
Bryan T. Newland  
President, Executive Council

BTN/kt

cc: CORA Member Tribes  
Katie Otanez, USACE Detroit Office  
Regional Administrator, Environmental Protection Agency  
Steven Willey, U.S. Department of Justice

cc: Tara Sweeney, Assistant Secretary of Interior--Indian Affairs  
Patrick Nelson, Cmdr. Sector Sault, U.S. Coast Guard

**I. Position of the Bay Mills Indian Community on Continued Operation of Line 5 in the State of Michigan**

Bay Mills Indian Community has serious concerns regarding the safety of continued operation of the Line 5 Pipeline in the Straits of Mackinac and on/near other bodies of water in our treaty-ceded territory. We believe that it is in the best interest of Bay Mills, the people of Michigan, and the United States, to decommission the Line 5 Pipeline and establish an alternative means for Enbridge to transport its oil from western Canada to Sarnia, Ontario.

## **II. Cultural Significance of Straits of Mackinac to the Great Lakes**

Every culture and religion in the world shares the story of the Great Flood. In Ojibwe oral traditions and cultures, the creation of North America also begins with a flooded Earth.

According to our oral histories, the animals that survived the flood received instructions from the Creator to swim deep beneath the water and collect soil that would be used to recreate the world. One by one the animals tried, but one by one they failed. The muskrat, as the last animal that tried, dove underneath the water and did not emerge. When the muskrat's body resurfaced, it carried a small handful of wet soil in its paws. The journey took the muskrat's life, but with its sacrifice the Creator used the soil collected and rubbed it on the Great Turtle's back. This land became known as Turtle Island, the center of creation for all of North America.

For the Ojibwe, the Great Turtle emerged from the flood in the Straits of Mackinac. Because the creation of North America took place in the Great Lakes, the Great Lakes are considered the heart of Turtle Island and as such - the heart of North America. The State of Michigan shares this history with the Ojibwe as well, and there are still signs of it in modern times. Mackinac City, Mackinac Island, Fort Michilimackinac, and the Straits of Mackinac were all named and established because of this shared history together.

In the Ojibwe language, "michi" is an old dialect for "gichi, which means "great." The Ojibwe word for water is "nibi," which is an inanimate word that shows no signs of life or movement. However, the word for the Great Lakes are "gichi gumee." Only things that are alive and have a spirit are assigned the word "gichi" or "michi." In addition, the Ojibwe word for turtle is "miikinaak." By combining these words together, you learn that Michlimackinac, and the word Mackinac are all derivations of the original name of the Great Turtle from the Ojibwe story of Creation.

In sharing these teachings, Bay Mills Indian Community emphasizes the cultural, traditional, spiritual, and historical significance of the Great Lakes to the Tribes and to the State of Michigan itself. Since time immemorial, the Great Lakes have been an integral part to Bay Mills' way of life, and they will continue to be an integral part of culture and traditions for many generations to come. By failing to consider the cultural significance of the Great Lakes to Bay Mills, and the dangers the Line 5 Pipeline poses to treaty-fishing rights, culture, and traditions of the Ojibwe - the State of Michigan risks killing the heart of North America, the heart of Turtle Island.

### **III. Historical Background**

#### **A. The Treaty of Washington (7 Stat. 491)**

Bay Mills is one of the signatories to the 1836 Treaty of Washington, which ceded territory to the United States for the creation of the State of Michigan. In exchange for the agreement to cede the territory to the United States, the Tribes reserved the right to hunt and fish throughout that territory – including in the Great Lakes (and the Straits of Mackinac).

In 1953, the State of Michigan granted an easement to the Lakehead Pipe Line Company to operate an oil and gas pipeline beneath the Straits of Mackinac. To the best of our knowledge, neither the Bay Mills Indian Community nor any other signatory to the 1836 Treaty of Washington was consulted about the decision to allow the pipeline to be constructed on the lakebed beneath the Straits. Enbridge has acquired ownership of that pipeline, which may include interest in the easement beneath the Straits.

In 1971, Michigan conservation officers cited Bay Mills tribal member Albert “Abe” LeBlanc for violating state fishing regulations. Several years later, in 1976, the Michigan Supreme Court held that Bay Mills, along with several other tribes, had retained the right to fish in the Great Lakes pursuant to the 1836 Treaty of Washington. The United States brought a lawsuit against the State of Michigan on behalf of the Tribes to enforce that treaty right; and, the United States District Court for the Western District of Michigan upheld the Tribes’ treaty rights in a famous 1979 decision now known as the “Fox Decision.”

In 1985, the State of Michigan and the signatory tribes to the 1836 Treaty entered into a consent judgment regarding management of the Great Lakes fishery. That agreement affirmed that the State and the Tribes must work together to protect the Tribes’ treaty fishing rights and manage the Great Lakes fishery in a manner that respected tribal and state interests. The Tribes and the State have worked together to protect the Great Lakes ever since.

In 2000, the State and the Tribes negotiated a second iteration of the consent judgment, which was intended to last until August 2020. We have recently begun the work necessary to negotiate a new consent judgment in the ongoing litigation between the State and the Tribes under the Fox Decision.

#### **B. Timeline of Events Related to Tribal Interest in Line 5 Pipeline Operations**

It is important to place our concerns in context of interactions that have taken place between tribes, federal agencies, state agencies, and Enbridge in recent years. Therefore, we have set forth a recitation of some of those key events:

**July 2010** – Enbridge’s Line 6B ruptures near Marshall, and spilled 800,000 gallons of oil into a tributary of the Kalamazoo River. The cost of the cleanup for this incident has exceeded \$1 Billion.



**July 2016** – The United States Department of Justice and Environmental Protection Agency files a lawsuit against Enbridge for environmental harm resulting from the Line 6B oil spill, and published notice of a draft Consent Decree with Enbridge. Without any prior notice to any of the tribes in Michigan, the draft Consent Decree included provisions relating to Enbridge's Line 5 crossing at the Straits of Mackinac (mandating that Enbridge take certain actions).

**August 3, 2016** – The State of Michigan issues a letter to Enbridge notifying them of violating the 1953 Easement due to unsupported spans of Line 5 exceeding 75 feet. Exactly two months later, DEQ issues permit to Enbridge for the installation of four screw anchors on the Line 5 Pipeline crossing in the Straits of Mackinac. Prior to this date, the State had never notified Bay Mills of Enbridge's anchor construction activities in the Straits of Mackinac.

**November 27, 2017** – Michigan Governor Rick Snyder signs an agreement between the State of Michigan and Enbridge setting forth some interim requirements for the operation of the Line 5 Pipeline in the Straits of Mackinac, and contemplating a replacement for the span beneath the Straits. While the agreement states that Enbridge's Line 5 Pipeline impacted tribal interests, neither the Governor nor any Michigan agency notified Bay Mills that it was negotiating an agreement with Enbridge.

**March 2018** – Bay Mills participates in a meeting with leadership from the MDNR and MDEQ in Lansing to discuss the State's ongoing efforts relating to the Line 5 Pipeline. The Director of the MDNR rejects a request from Bay Mills to amend the November 2017 agreement with Enbridge to make Tribes a party to that agreement; or, to enter into an agreement with Tribes to provide information relating to the safety of the Line 5 Pipeline. In rejecting our request, the Director of the MDNR told Bay Mills representatives to, "get your own agreement with Enbridge."

**April 1, 2018** – Enbridge's Line 5 pipeline is damaged by an anchor drag/strike from a commercial vessel in the Straits of Mackinac. That same incident caused damage to electrical cables along the bottom of the Straits owned by American Transmission Company, resulting in several hundred gallons of toxic chemicals spilling into the water. Due to adverse weather conditions, federal and state agencies were unable to assess the scope of the chemical spill for several days.

**April 2018** – Bay Mills, and other tribes, become aware that the U.S. Department of Justice is negotiating an amendment to its 2016 settlement agreement with Enbridge regarding the Line 5 Pipeline. Federal agencies did not provide Bay Mills, or other tribes, with notice of these negotiations until they were substantially completed.

**May 15, 2018** – Bay Mills hosts representatives from Enbridge and the 1836 Treaty Tribes for a discussion about a potential agreement relating to information-sharing



about the Line 5 Pipeline. Enbridge refuses to provide the Tribes with the same information it provides to the State of Michigan relating to the condition of the pipeline.

**June 28, 2018** – Bay Mills participates in a consultation with the U.S. Army Corps of Engineers regarding Enbridge’s application for the installation of several dozen anchor supports along the Line 5 Pipeline. The U.S. Army Corps indicates that it will perform an Environmental Assessment of Enbridge’s application, instead of granting the permit under a nationwide permit (pursuant to previous practice). This is the first time Enbridge’s applications relating to the Line 5 Pipeline have been subjected to scrutiny under the National Environmental Policy Act.

**August 7, 2018** – Bay Mills participates in a consultation with the U.S. Department of Justice and Environmental Protection Agency in Traverse City, regarding proposed amendments to the 2016 consent decree. Attorneys with the U.S. Department of Justice informed tribal representatives that Enbridge was not in compliance with its easement with the State of Michigan. The DOJ and EPA filed the proposed amendments with the Court less than 24 hours after the meeting, and did not provide any substantive responses to tribal comments/concerns. Notably, the State of Michigan did not comment on the proposed amendments, despite ongoing negotiations with Enbridge.

**October 3, 2018** – Michigan Governor Rick Snyder enters into a second agreement with Enbridge regarding the continued operation of the Line 5 Pipeline in the Straits of Mackinac. Among other things, the new agreement requires Enbridge to take immediate steps to repair/improve the Line 5 Pipeline at two different water crossings in the Upper Peninsula. Tribes were not provided any opportunity to participate in the State’s negotiations, or otherwise comment on the State’s proposals. Tribes were not provided any prior notice that the two water crossings referenced in this agreement were matters of concern, despite prior requests to the State to receive information regarding the condition of Enbridge’s Line 5 Pipeline.

**November 2018** – Michigan’s Legislature introduces and immediately moves legislation authorizing the construction of a multi-utility tunnel beneath the Straits of Mackinac, and establishing an independent government body to regulate that tunnel. Michigan Governor Rick Snyder signs the legislation into law and immediately appoints members to the governmental body. Bay Mills, and other tribes, were not consulted during this process. In response to Bay Mills’ request for government-to-government consultation, the Director of the MDNR responds that, “we don’t need to consult with you because we already know your position.”

**December 2018** – Outside Legal Counsel for Michigan’s Governor engages in discussions with representatives for several tribes regarding an intergovernmental agreement that provides for joint tribal-state participation in monitoring and improving the condition of the Line 5 Pipeline at other water crossings in the State

of Michigan. The discussions expire at the conclusion of the Michigan Governor's term on December 31, 2018.

**March 28, 2019** – Michigan's Attorney General issues a formal opinion stating that the 2018 legislation authorizing a multi-utility tunnel beneath the Straits of Mackinac and establishing an independent governing body for its oversight is unconstitutional.

**April 30, 2019** – The Vice-President for American Transmission Company issues a letter to the Executive Director of the Chippewa Ottawa Resource Authority stating that a multi-utility tunnel beneath the Straits of Mackinac may not be feasible. The letter also states, "ATC does not believe that installing high voltage electric lines in close proximity to high pressure oil or gas lines is a good idea."

**May 3, 2019** – Representatives from several state agencies participate in a formal government-to-government consultation with tribal representatives in Mackinaw City regarding the State of Michigan's approach to Enbridge's Line 5 Pipeline.

As this timeline of events shows, Bay Mills (and other tribes) have been consistently and repeatedly excluded from any governmental process relating to Enbridge's Line 5 Pipeline, despite repeated requests to participate; and, despite our treaty-protected interest in the Straits of Mackinac.

In a number of instances, the State (and federal) government ignored tribal questions on matters that came to public light later – such as the condition of other water crossings for the Line 5 Pipeline, and the feasibility of a multi-utility tunnel beneath the Straits of Mackinac.

#### **IV. Questions and Concerns of the Bay Mills Indian Community Regarding Line 5**

The State of Michigan is considering taking actions to allow Enbridge to take further steps to stabilize the Line 5 dual pipelines in the Straits of Mackinac, to improve Line 5 water crossings of other water bodies in Michigan, and to construct a multi-utility tunnel beneath the Straits of Mackinac. All of these actions would occur within our treaty-ceded territory, where we manage natural resources in coordination with the State of Michigan and the United States under a series of judicially-binding consent decrees in the case of *United States v. Michigan*.

At present, we lack important information that would allow us to protect our interests, and provide the State with valuable insights that can inform its decision-making process. We have requested much of this information from the State in the past, without receiving substantive responses. We have set forth our outstanding questions below, along with additional questions for the State. The Tribe respectfully requests a formal and substantive response to these questions within 45 days:

**1. *Does Enbridge shut down (vacate and depressurize) the Line 5 Pipeline beneath the Straits of Mackinac during maintenance activities?***

Enbridge has clearly demonstrated that completing maintenance activities on the Straits segment of Line 5 can result in damage to the Line. For the protection of our Great Lakes resources, Bay Mills requests that the State make this a conditional requirement to any additional permits being administered for maintenance on the Line 5 Pipeline.

**2. *How did the State determine the 8-foot wave height threshold for “adverse weather conditions” in its November 27, 2017 agreement with Enbridge, Inc.?***

The November 27, 2017 agreement between the State of Michigan and Enbridge, Inc. establishes an 8-foot wave height threshold for the occurrence of “adverse weather conditions,” during which Enbridge, Inc. must shut down the Line 5 Pipeline beneath the Straits of Mackinac. Federal agencies, including the Coast Guard have indicated that they were not formally consulted by the State of Michigan in developing this standard, and have indicated to Tribes that they may not be able to respond to an oil spill when wave heights exceed four feet.

**3. *Does the State of Michigan have a plan in place for response to an oil spill in the Straits of Mackinac? Does the State of Michigan have any agreements in place with federal, tribal, or local governmental agencies to respond to an oil spill in the Straits of Mackinac?***

At present, Enbridge does not have a federally-approved spill response plan for the Line 5 Pipeline. In posing this question to State agencies in the past, officials have indicated that federal, state, and local agencies would respond to a spill pursuant to intergovernmental agreements. But, the State has not provided copies of any such agreements. To our knowledge, there are no intergovernmental agreements in place that address a response to an oil spill in the Straits of Mackinac.

**4. *Given recent events with American Transmission Company’s spill in the Straits, is the State confident that it (or any responding agency) can sufficiently protect our resources in the Straits by responding to a spill during ice cover?***

**5. *Does the State of Michigan know how many times the Line 5 Pipeline has been struck or damaged by a vessel anchor? If so, can the State of Michigan please provide Bay Mills with records of those incidents?***

In 2018, a vessel anchor struck and damaged the Line 5 Pipeline in the same incident in which a vessel anchor damaged American Transmission Company's electric transmission lines. Enbridge self-reported the anchor strike, but has not provided the public with any information on previous anchor strikes on the Line 5 Pipeline.

6. *Does the State of Michigan have a mechanism in place for Enbridge to report damage to the Line 5 Pipeline that occurs due to maintenance and/or construction activities? How many times has Enbridge's maintenance and/or construction activities caused damage to the Line 5 Pipeline in the Straits of Mackinac and at other water crossings?*
7. *In light of the American Transmission Company's April 30, 2018 letter to the Chippewa Ottawa Resource Authority, does the State of Michigan believe that it is safe to place high-voltage power lines in close proximity to high-pressure oil pipelines in an enclosed tunnel beneath the Straits of Mackinac? Does American Transmission Company's recent letter change or alter the State's views on whether such a tunnel is technically and economically feasible?*
8. *Has the State of Michigan identified any other Line 5 Pipeline water crossings that are of immediate concern, beyond those specified in the October 3, 2018 agreement between the State and Enbridge?*
9. *Does the installation of additional screw anchors on the Line 5 Pipeline in the Straits of Mackinac increase the risk of an anchor-strike or anchor-"hook"?*
10. *Does the State view the lack of a federally-approved response plan as required by the Oil Pollution Act of 1990, a violation of the 1953 Easement with the State of Michigan.*
11. *Given that the coal tar coating of Line 5 is known to be highly toxic, has any data been collected on the presence of contaminants in sediments surrounding Line 5?*

We asked this question in our July 31, 2017 letter to the State of Michigan regarding Enbridge's permit application for 22 anchor supports. The same question was asked of the United States Army Corps of Engineers in letters dated July 31, 2017 and December 19, 2017. To date we have not received a substantive response from any agency.

12. *If a spill in the Straits were to happen today, what current baseline data on the aquatic resources of the Straits does the State have that would inform the Natural Resources Damage Assessment process?*

**V. Bay Mills Indian Community Requests and Recommendations to the Governor**

In addition to the questions above, Bay Mills Indian Community requests that the State of Michigan take the following steps to protect our shared sovereign interests in the waters of the Great Lakes:

- 1. Immediately halt or suspend any consideration of further permits related to the Line 5 Pipeline until Enbridge has received federal approval for its spill response plan.**

Enbridge (belatedly) disclosed that its earlier construction activities have damaged the Line 5 Pipeline beneath the Straits. Construction of several dozen new anchor supports increases the potential for a pipeline rupture and oil spill. It would be reckless to allow Enbridge to conduct activities that place the Great Lakes at risk of an oil spill without having an approved spill-response plan in place.

- 2. Execute intergovernmental agreements with federal, tribal, and state agencies for pipeline monitoring and response to an oil spill in the Straits of Mackinac or other bodies of water within the State of Michigan.**
- 3. Resume negotiations with tribal governments regarding the integrity of the Line 5 Pipeline at other water crossings within the State of Michigan.**
- 4. Reach a determination that the installation of anchor supports along the Line 5 Pipeline in the Straits of Mackinac do not increase the risk of a structural failure in the pipeline or an anchor strike prior to issuing any permit for installation of such supports.**
- 5. Undertake a comprehensive risk analysis by independent experts of decommissioning the Straits segment of Line 5, and with the alternative scenarios limited to the continued operation of the existing infrastructure.**
- 6. Include Bay Mills (and other 1836 Treaty tribes) in any negotiations with Enbridge and/or government agencies regarding the potential for a tunnel beneath the Straits of Mackinac.**
- 7. Include Bay Mills (and other Treaty Tribes) in any discussions with Enbridge and/or government agencies regarding the condition of inland portions of Line 5, especially at water-crossings and sensitive habitats.**

The Bay Mills Indian Community is a sovereign Indian tribe with governmental interests. Enbridge is not; it is a private, for-profit company. The Bay Mills Indian Community has rights to the waters of the upper Great Lakes that are expressly reserved through a treaty with the United States. Enbridge does not. The Bay Mills



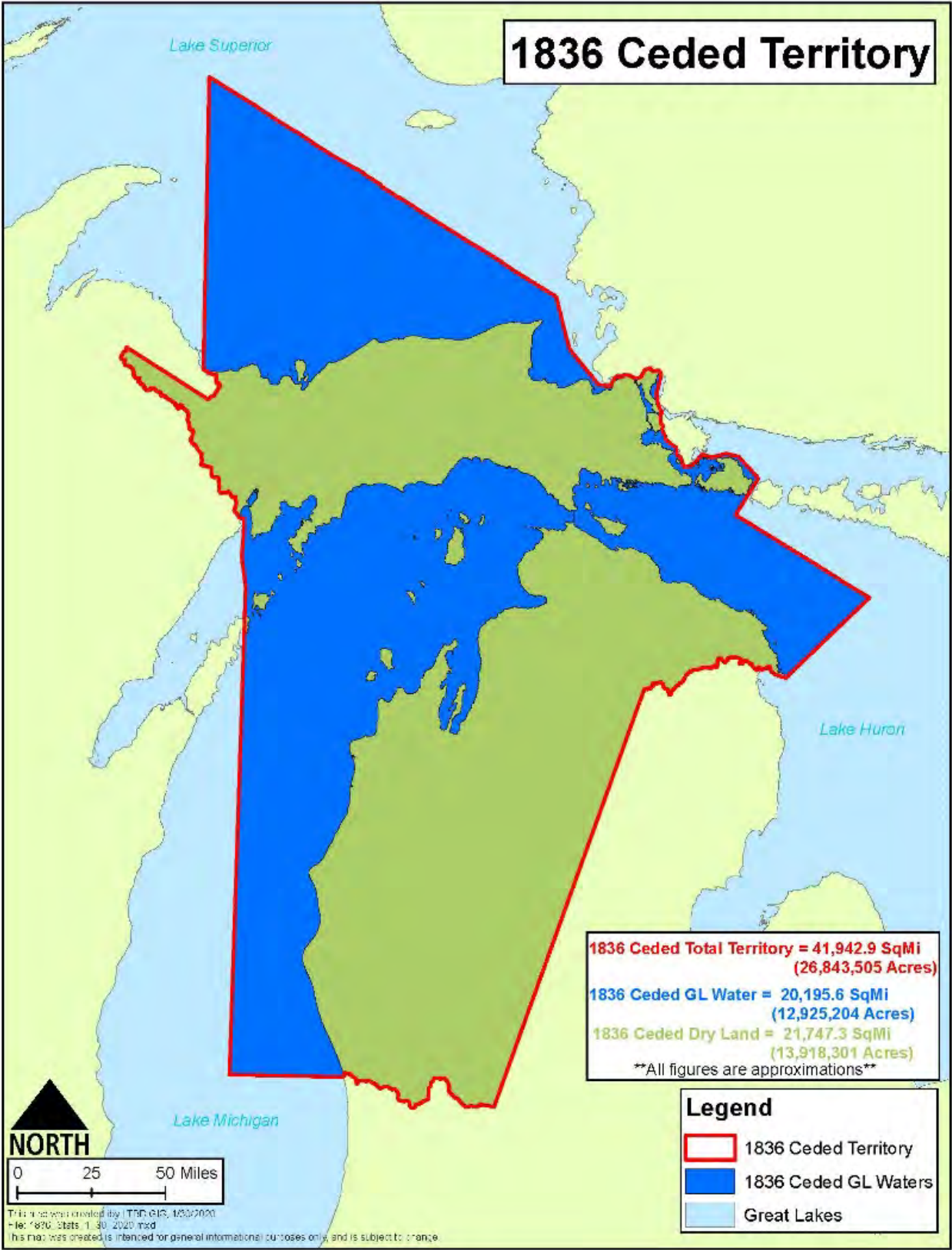
Indian Community is party to litigation with the State of Michigan and the United States concerning the protection and exercise of those rights. Enbridge is not.

Therefore, it is wholly inappropriate for the Bay Mills Indian Community to be excluded from any agreement concerning the impacts of the Line 5 Pipeline on our treaty-reserved rights.

**Conclusion**

The Bay Mills Indian Community is appreciative of the opportunity to express its concerns and recommendations to the Governor in this extremely important matter.

# EXHIBIT BMC-6





# EXHIBIT BMC-7

R-9120-1  
**APPEARANCE TICKET**  
STATE OF MICHIGAN  
County of Chippewa  
☐ City ☐ Village ☒ Township  
of Bay Mills  
In the 91 District Court of the City of Sault Ste Marie  
Michigan, the undersigned complainant, upon his oath, deposes and says:  
that on the 28 day of Sept, 1921, at 12:05 <sup>a.m.</sup> p.m.  
Defendant's Name Albert E. LeBlanc  
Residence Bay Mills Cr. Box 170 A  
Brimley, Michigan  
Eyes \_\_\_\_\_ Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_ D.O.B. May 16, 1904  
Oper's. License 

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 State \_\_\_\_\_  
Soc. Security No. 

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DID UNLAWFULLY IN THE CITY, VILLAGE, TOWNSHIP AND COUNTY  
AFORESAID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:  
Fish 4 1/2" Pig flesh in closed  
waters  
In that said Defendant at the time and place aforesaid did  
Fish 500 to 600 ft of Gill Net  
4 1/2" flesh in L. Superior Spring  
1 1/2 miles east of Bay Mills Cr.  
In violation of Sec. 1, Chapter 284, P.A. 1929,  
as amended, of State Law.  
You are notified that the officer or other complainant whose name  
appears below will file a sworn complaint in the court charging you  
with the offense set forth above.  
**NOTICE: Read the back of this ticket. BRING THIS COPY WITH YOU.**  
TO: Albert E. LeBlanc:  
You are hereby notified to appear before J. Lambros  
of the 91 District Court at Sault  
Ste Marie Michigan, on the 29 day of Sept,  
1921, at 10 <sup>a.m.</sup> p.m. to answer to a complaint to be filed in said court  
charging you with the offense designated above.  
Wm. L. Andrews  
SIGNATURE OF ISSUING OFFICER OR OTHER COMPLAINANT

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of Enbridge Energy, Limited Partnership for the Authority to Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac, if Approval is Required Pursuant to 1929 PA 16; MCL 483.1 et seq. and Rule 447 of the Michigan Public Service Commission's Rules of Practice and Procedure, R 792.10447, or the Grant of other Appropriate Relief

U-20763

ALJ Dennis Mack

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**PROOF OF SERVICE**

On September 14, 2021, an electronic copy of *Direct Testimony of Jacques LeBlanc Jr. on behalf of Bay Mills Indian Community* was served on the following parties:

<b>Name/Party</b>	<b>E-Mail Address</b>
<b>Administrative Law Judge</b> Hon. Dennis W. Mack	<a href="mailto:Mackd2@michigan.gov">Mackd2@michigan.gov</a>
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<b>Little Traverse Bay Bands of Odawa Indians</b> James A. Bransky	<a href="mailto:jbransky@chartermi.net">jbransky@chartermi.net</a>

Date: September 14, 2021

By: Christopher R. Clark  
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