



The Grand Traverse Band of Ottawa and Chippewa Indians

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December 20, 2017

Hon. Rick Snyder, Governor
State of Michigan
P. O. Box 30013
Lansing, Michigan 48909

Dear Governor Snyder,

We have joined Michigan's other Indian Tribes in a comment being sent separately titled "Tribal Comments on Dynamic Risk Final Alternatives Analysis" that supplements our August 1, 2017 submission. Additionally we are writing today to express our deep disappointment in your November 27, 2017 agreement with Enbridge because the agreement: (1.) ignores our preexisting "treaty-fishing" rights in the Straits of Mackinac, (2.) violates Michigan's environmental protection laws, and (3.) breaches your commitment to consult with Tribal governments (Executive Directive No. 2012-2; *see also* May 12, 2004 Intergovernmental Accord Concerning Protection of Shared Water Resources).

The Grand Traverse Band of Ottawa and Chippewa Indians protests your November 27, 2017 agreement with Enbridge because it doesn't take into consideration these basic facts:

- Great Lakes fishing rights were reserved in the 1836 Treaty by the Indian tribal signatories; Michigan achieved statehood in 1837 subject to these "treaty-fishing" rights;
- written history dating back 350 years confirms that Mackinac Straits was historically the most important fishing location for the Ottawa and Chippewa;
- the Straits area remains today the 1836 Treaty Tribes' most important fishing grounds; and
- Line 5 poses an unacceptable risk of harm to our Treaty-reserved resources.

The joint-tribal comments demonstrate that the "alternatives" report is deeply flawed, but at least Dynamic Risk's final report *purports* to address all alternatives. However that effort to consider all "alternatives" (to continue pumping of oil through Line 5) now has been short-circuited by your November 27, 2017 agreement, which limits consideration of "alternatives" just to various options for pumping oil through the Straits (and not to other possible feasible and prudent alternatives that don't put the Straits at risk). The result is that the State's current

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position violates Michigan law, because the Governor-Enbridge agreement fails *to require Enbridge to prove* that "there is no feasible and prudent alternative" to the continued pumping of oil through the Straits of Mackinac (as is required by the Michigan Environmental Protection Act [MEPA] and Great Lakes Submerged Lands Act [GLSLA¹]).

The Grand Traverse Band urges you to reconsider your commitment to the November 27, 2017 agreement. Let's start with the consultation with the 1836 Treaty (CORA) Tribes you committed to in Executive Directive No. 2012-2. Then please provide us with an opportunity to point out the benefit of requiring Enbridge to comply with the mandates of MEPA and GLSLA.

Your department ignored our suggestion four months ago², and look how that's played out. Instead of requiring Enbridge to satisfy the burden of proving (as required by MEPA and GLSLA) that there is no feasible and prudent alternative to the continued pumping of oil through the Straits of Mackinac, you (the State, through your department heads and appointed board) commissioned what turned out to be a deeply-flawed "alternatives" report. Now you "own it"; and the flaws are your responsibility rather than Enbridge's as required by MEPA and GLSLA.

As Governor your duty is to preserve the natural resources³ for all Michigan citizens; your primary concern should not be Enbridge's corporate well-being. Please reconsider the erroneous premise of the November 27, 2017 agreement that there is no feasible and prudent alternative to the continued pumping of oil through the Straits; Enbridge should be required to prove this essential element. It's not too late; there still is time to burnish your legacy as a champion for protecting the "pure Michigan waters" of the Straits of Mackinac.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thurlow McClellan', with a long horizontal flourish extending to the right.

Thurlow ("Sam") McClellan,
Tribal Chairman

Copies transmitted via email to:

Valerie Brader, Executive Director, Michigan Agency for Energy
C. Heidi Grether, Director, Michigan Department of Environmental Quality
Keith Creagh, Director, Michigan Department of Natural Resources
David Nyberg, Tribal Liaison, Governor's Marquette Office
S. Peter Manning, Assistant Attorney General
Robert Reichel, Assistant Attorney General
Trevor VanDyke, MDNR Tribal Liaison

¹ Rule 15(b) [R 322.1015(b)] of Great Lakes Submerged Lands Act administrative rules states:
"In each application for a permit, lease, deed, or agreement for bottomland, existing and potential adverse environmental effects shall be determined. Approval shall not be granted unless the department has determined both of the following:
(a) That the adverse effects to the environment, public trust, and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible.
(b) That there is no feasible and prudent alternative to the applicant's proposed activity which is consistent with the reasonable requirements of the public health, safety, and welfare." (Emphasis added.)

² See July 20, 2017 letter to MDEQ Director Grether.

³ Article IV, § 52 of the Michigan Constitution of 1963 states in pertinent part: *"The conservation ... of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people."* (Emphasis added.)