NOTTAWASEPPI HURON
BAND OF THE POTAWATOMI

A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT

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NATURAL RESOURCES
DIVISION

Nottawaseppi Huron Band of the Potawatomi
William Brooks, Chief Legal Counsel
1485 Mno-Bmadzewen Way
Fulton, MI 49052

June 25, 2015

Attorney General Bill Schuette
G. Mennen Williams Building, 7th Floor
525 West Ottawa Street
P.O. Box 30212
Lansing, MI 48909

Re: NHBP Resolution No. 06-18-15-06

Dear Attorney General Schuette:

On behalf of William Brooks, Chief Legal Counsel, enclosed please find the following document to be included in the Michigan Petroleum Pipeline Task Force record:

> Nottawaseppi Huron Band of the Potawatomi Indians Resolution No. 06-18-15-06, Recommending De-Commissioning of Enbridge Line 5 Beneath the Straits of Mackinaw and That the State of Michigan Exercise its Authority to Address Current Risks Associated with Line 5 Pending De-Commissioning.

Thank you for your time in this matter.

Sincerely,

Rebecca Griffin

Rebecca Griffin
Legal Assistant
Nottawaseppi Huron Band of the Potawatomi

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI INDIANS
RESOLUTION NO. 06-18-15-06

Recommending De-Commissioning of Enbridge Line 5 Beneath the Straits of Mackinaw and

That the State of Michigan Exercise its Authority to Address Current Risks Associated with Line 5 Pending De-Commissioning

WHEREAS: On December 21, 1995, the Department of the Interior recognized the Nottawaseppi Huron Band of the Potawatomi, as a federally recognized Indian Tribe pursuant to the Federal Acknowledgment Process (60 Fed. Reg. 66315);

WHEREAS: the traditional territories of the Nottawaseppi Huron Band of the Potawatomi included all of the lands in what is now known as Calhoun County, Michigan, as recognized in treaties with the United States, including the 1807 Treaty (Kappler 1972, 2:92) and the 1821 Treaty of Chicago (Kappler 1972, 2:198-201), and pursuant to which representatives of the Tribe reserved certain property interests;

WHEREAS: Article VI, Section 1 of the Tribe's Constitution empowers the Tribal Council to negotiate on behalf of the Tribe with the federal government and private parties in furtherance of tribal purposes;

WHEREAS: the Tribe understands the risks associated with the transport of diluted bitumen or tar sands oil in aging pipelines as a result of experiences associated with the Enbridge Line 6b failure and the resulting Kalamazoo River oil spill and its collaboration with other federal, state and tribal governments in connection with natural resource damage assessment and restoration efforts related to that oil spill;

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WHEREAS: in early 2014, Michigan's Attorney General Bill Schuette and Dan Wyant, Director of the Michigan Department of Environmental Quality formed the Michigan Petroleum Pipeline Task Force for the purpose of assessing the safety and risks associated with petroleum pipelines in the State of Michigan, with specific emphasis on the that portion of Line 5, which lies along the bottomlands of the Straits of Mackinaw; and

WHEREAS: the Tribal Council has been informed that Enbridge Energy owns certain petroleum pipelines Line 5, which is owned by Enbridge Energy is over 62 years old and that Enbridge Energy currently does, or is proposing to, to transport diluted bitumen and other "heavy" oils in that pipeline and may have plans to increase the volume of petroleum pumped through Line 5;

WHEREAS: the Tribal Council is further aware that the Straits of Mackinac is central to these Treaty-reserved fishing rights of Ottawa (Odawa) and Chippewa (Ojibwe) under the 1836 Treaty of Washington, due to the abundance of fish stocks and related spawning grounds in those portions of the Great Lakes near the Straits; and

WHEREAS: the State of Michigan owns the bottom lands under the Great Lakes bordering the State of Michigan, and the Enbridge oil pipelines (Line 5) currently are located on the bottom lands within the Straits of Mackinac under authority of the Great Lakes Submerged Lands Act and the terms of a 1953 easement; and

WHEREAS: the Enbridge Line 5 extending through the Straits of Mackinac pose a great risk to the Grand Traverse Band's Treaty-reserved fishing rights, especially if Enbridge were to begin transmitting tar sands crude oil mixed with sand, clay and other corrosive material under greater pressure, thereby increasing the risk of ruptures in the old metal pipelines; and

WHEREAS: independent scientists have confirmed that a number of factors or conditions which were either unknown or not anticipated at the time Line 5 was installed, have raised serious concerns as to whether petroleum products may continue to be safely transported through Line 5 without substantial risk; and

WHEREAS: independent scientists have confirmed that there has never been, and according to standard competent risk and magnitude of harm evaluation there should be, an alternatives pipeline route and capacity and comparative risk assessment for Line 5, including the underwater segment in the Straits of Mackinac; and

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WHEREAS: the Tribal Council is further aware that neither Enbridge Energy, nor the any State, federal or local agencies, have the necessary contingency plans nor equipment needed to respond to a rupture or other incident involving a failure in Line 5 in waters of the Straits of Mackinaw and that a spill could have catastrophic effects on the environment and resources of the Great Lakes; and

WHEREAS: the Michigan Petroleum Pipeline Task Force has initiated consultation with Michigan-based Indian tribes and has asked each Tribe to provide comments and/or resolutions stating their respective positions.

THEREFORE BE IT RESOLVED that the Tribal Council hereby requests the State of Michigan to exercise authority under the Great Lakes Submerged Lands Act and the 1953 easement to require Enbridge, consistent with the public trust and Enbridge's obligation to "exercise the due care of a reasonably prudent person for the safety and welfare of all persons and of all public and private property" to:

(a) Demonstrate that its Line 5 pipelines within the Straits of Mackinac are in a condition such that Line 5 can safely transport petroleum products in a manner that does not pose a risk of harm to public and private property interests in Great Lakes waters and other resources, and will not pose a risk of harm to the 1836 Treaty-tribes' Treaty-reserved fishing rights;

(b) Demonstrate that Enbridge has no feasible alternative pipeline routes, capacity, now or in the future, to transport oil or petroleum products into Michigan's Lower Peninsula;

(c) Demonstrate that it has appropriate plans in place to continuously monitor, inspect, and assure the structural integrity of Line 5;

(d) Demonstrate that it response plans and equipment necessary to respond to any leak of petroleum products into the waters of the Lake Great Lakes from Line 5 are in place, in close proximity, and that all federal, tribal, state, local and private agencies and resources have had the opportunity to comment on the adequacy of such response plan;

(e) Enbridge to provide evidence of liability insurance, bond or other suitable surety of the type and in amount(s) commensurate with the anticipated response costs and natural resource damages associated with the magnitude of harm based on a thorough and independent "worse-case scenario," and other risks associated with leak or failure that might result in the release of petroleum products from Line 5 into the Great Lakes waters in the Straits of Mackinaw; and

(f) **Enbridge be required to cease all transportation of oil, diluted bitiumen or other heavy oils through Line 5 unless and until such time as Enbridge is able to demonstrate that the requirements described in paragraphs (a) through (e) have been satisfied.**

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BE IT FURTHER RESOLVED that the Tribal Council hereby requests that the State of Michigan take steps under its existing authorities to require Enbridge to begin taking steps to establish a plan and to implement the de-commission and removal of Line 5 from the Straits of Mackinaw.

IT IS FINALLY RESOLVED that the Tribal Council requests that the State of Michigan continue consultation with representatives of Tribal governments and other parties and, in collaboration with pipeline companies, engage such independent scientists and experts as are needed to undertake a comprehensive review and recommendation regarding magnitude of harm, risks, and alternative pipeline capacity, route, and logistic risk assessment of Line 5, and other petroleum pipelines in the State of Michigan to:

(a) Identify the age, condition and current operating condition of all petroleum pipelines;
(b) Identify petroleum pipelines, which because of their proximity to population centers, stream crossings/sensitive environmental areas, or culturally significant resources, have increased risk factors associated with any spill or failure;
(c) Require state-of-the-art worse-case magnitude of harm scenario and alternatives risk assessments;
(d) Determine the adequacy of pipeline monitoring and inspection programs; and
(e) Evaluate the extent to which federal, state, tribal and local agencies are prepared to respond to any leak or spill; and
(f) Consider other factors and implement other accountable, transparent processes recommended by subject matter experts, including appropriate changes to state and federal laws governing the processes for petroleum pipeline siting, inspection and operation to assure protection of the environment, public/private property and public health and safety.

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CERTIFICATION

On June 18, 2015, this resolution was approved at a duly called regular meeting of the Tribal Council held on the Pine Creek Indian Reservation, a quorum being present, by an affirmative vote 5 members, 0 opposing, 0 absent, and 0 abstaining, this 18th day of June 2015.

Dorie Rios, Secretary

Homer A. Mandoka, Chairperson

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Distribution: Government Records
Michigan Petroleum Pipeline Task Force
Hon. Rick Synder, Governor

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