



Little River Band of Ottawa Indians Natural Resources Department

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To: Co-Chair Bill Schuette, Attorney General
Co-Chair Dan Wyatt, MDEQ Director
Michigan Petroleum Pipeline Task Force

The Little River Band of Ottawa Indians (Little River) is a self-governing, Federally-recognized Tribe with Tribal headquarters located in Manistee, Michigan. Little River is the political successor to certain Grand River Ottawa Bands who were signatory Bands of the Treaty of 1836. The United States holds lands in trust for the benefit of Little River within its historic Reservations in both Manistee and Mason counties. Little River also shares usufructuary rights with four other tribes headquartered in the 1836 Ceded Territory, an area encompassing much of the Upper and Lower Peninsulas of Michigan state. Little River co-manages aquatic, wildlife, and other natural resources in this territory with the State of Michigan. If an oil spill were to happen within the Ceded Territory (or outside the Territory with indirect adverse effects to resources within the Territory), Little River would have claims under the Natural Resource Damage Assessment process.

Little River would like to thank the Michigan Petroleum Pipeline Task Force (PTF) for meeting with the tribes on February 4, and we look forward to other meetings and updates as the work of the PTF progresses. We offer the following suggestions to the PTF based on our discussions that day and our own research into the status of Michigan's oil pipeline network.

Little River, as a member of the Chippewa Ottawa Resource Authority (CORA), stands by CORA's February 23 letter sent to the PTF. It calls for the state to "permanently decommission the Enbridge Line 5 as soon as possible." We believe this is the best solution to the ongoing crisis posed by the pipeline. Its small benefits are vastly outweighed by the enormous risks posed to 20 percent of the world's fresh surface water and the vast economic, recreational, and environmental benefits the Great Lakes provide. Indeed, a full and detailed analysis of the costs and benefits of the pipeline, as well as the true level of risk to those resources, has never been done.

We recognize, however, that the PTF's recommendations may fall short of this mark. Therefore, we have provided the following comments in the hope that if the pipeline ultimately continues operating, it may be done in the safest and most transparent ways possible.

Safety Analysis

It is clear that a rigorous, independent, and scientifically-based assessment of the safety of Enbridge's Line 5 must be performed. Little River, as well as the Michigan public and all those that depend on the Great Lakes ecosystems, must be assured that the pipeline meets the strictest safety standards and is operating within those strictures. It is unclear whether the PTF is charged with performing such an analysis, or whether its purview is simply to recommend that one be performed. Either way, an independent safety review is critical.

Legal Measures

We join with the Grand Traverse Band, CORA, the Oil and Water Don't Mix Campaign, and many others in calling for the PTF to recommend that the state invoke the Great Lakes Submerged Lands Act (GLSLA) to require that Enbridge submit a bottomlands conveyance application. Such an application would allow for the aforementioned and much needed analysis of the pipeline and its risks. It would also allow for a transparent process with input by the public, stakeholders, and tribes.

Little River would also like to see Michigan Public Act 16 of 1929, one of the main laws concerning the transmission of petroleum products in Michigan, strengthened and updated to include a comprehensive and rigorous permitting program. This should be one of the PTF's chief recommendations to the governor and the Michigan Legislature. Indeed, we believe that this measure is so critical to Michigan's future that it should be implemented even if Line 5 is decommissioned.

During the *Deepwater Horizon* oil spill, several issues were raised regarding proper jurisdiction, roles, responsibilities, and culpability of the various parties involved in the spill.¹ The state should sign an MOU or other legal instrument as appropriate, stating that Enbridge, or any successor entity which purchases or subsumes Enbridge, will not contest liability in the event of a Line 5 spill, no matter the cause. Such an agreement should establish a reserve fund for 50 to 75 percent of the cost to remediate and restore the likeliest worst-case scenario spill. It is important this fund be immediately available within hours of an event.

When Enbridge's Line 6B ruptured near Marshall in 2010, the cleanup crews and personnel did not find out that the material was dilbit for some time afterwards. This situation cannot be allowed to reoccur. The state must force pipeline operators to disclose the specific products in their pipelines, as well as all diluent and other substances with which it might be combined. This would include any such compounds which may be construed as "trade secrets." In its comments on the Keystone XL pipeline, the EPA notes that

¹ Curry L. Hagerty and Jonathan L. Ramseur, *Deepwater Horizon Oil Spill: Highlighted Actions and Issues* (Washington, DC, 2010), accessed July 23, 2013, <https://www.fas.org/sgp/crs/misc/R41407.pdf>.

Without more information on the chemical characteristics of the diluent or the synthetic crude, it is difficult to determine the fate and transport of any spilled oil in the aquatic environment. For example, the chemical nature of the diluent may have significant implications for response as it may negatively impact the efficacy of traditional floating oil spill response equipment or response strategies.²

Without this information on hand, it will simply be impossible to adequately prepare and implement an effective response plan.

Certainly, full public disclosure of all these materials and chemicals would be preferable, in the interest public awareness. While this would likely take legislative action, Michigan could be at the forefront of informing its citizenry in this respect. Such legislation would make a strong statement that in Michigan, trade secrets do not outweigh public and environmental safety. However, an alternative would be simply to keep the information on file with the state government, so that it may be readily available to response personnel and public health officials if an incident occurs. These materials would already be protected from Michigan's Freedom of Information Act as trade secrets.

The PTF should examine the relationship where states (and state inspectors acting under its aegis) can act as "agents" under which they can enforce federal safety guidelines. We are unsure if Michigan has any pipeline inspectors or other personnel working under this capacity, but if not, the PTF should recommend that Michigan establish a robust enforcement cadre under this authority. Inspectors can even be authorized to conduct associated enforcement for gathering pipelines and other conveyances, even if these structures do not fall under the Pipeline and Hazardous Materials Safety Administration's safety regulations.³

Physical Measures

As well as legal actions and reforms, there are many material means by which the risk of catastrophic spills can be reduced. Apparently the original design for Line 5 called for more safety features that were not implemented,⁴ although we were unable to determine the exact nature of those features. If the PTF is aware of these, Little River would like further information.

² Environmental Protection Agency to Jose W. Fernandez and Kerri-Ann Jones, July 16, 2010.

³ Government Accountability Office, *Oil and Gas Transportation: Department of Transportation Is Taking Actions to Address Rail Safety, but Additional Actions Are Needed to Improve Pipeline Safety* (Washington, DC, August 2014).

⁴ Mark Brush, "What's the Status of the Old Oil Pipeline under Lake Michigan? We Need More Information to Know." October 9, 2014, accessed March 23, 2015, <http://michiganradio.org/post/whats-status-old-oil-pipeline-under-lake-michigan-we-need-more-information-know>.

Line 5 should be replaced or reinforced with a double-jacketed form. It is unlikely that a single-walled design would have been approved in such a sensitive area, given modern engineering and permitting standards.

Remote sensors are an important part of the leak detection system, but they are also inherently unreliable. A recent investigation determined that 19 out of 20 leaks are not detected by these systems.⁵ Smaller leaks may be virtually impossible to detect by these remote systems, and in Line 5 in particular may go undetected by humans for some time by virtue of being underwater. Assurance of steady flow rates, rather than constantly changing ones, can help these systems work best. It may also be possible to install an array of external sensors to detect leaks before they become catastrophic.

Operational Measures

Additionally, there are ways to operate the pipeline that mitigate the chances of spills or the severity of spills should they occur. And spills can be exacerbated by human error. For example, in the Line 6b spill, Enbridge continued pumping oil through the rupture because they misinterpreted pressure alarms. Seventeen hours went by until Enbridge officials realized what had happened, during which they *increased* pipe pressure twice.⁶

We suggest several means of altering the pipeline's control. Firstly, conveyance of any material through the pipeline should be shut down when the strait is frozen over. As you are aware, should a rupture occur under the ice, access and cleanup would be severely hampered, if not impossible. The recent spill in Glendive, Montana of the Poplar pipeline, which occurred in the frozen Yellowstone River, highlights not only the problematic cleanup efforts but also the extreme danger such a scenario represents to incident response crews and other operational teams.⁷ When formulating this stipulation we suggest that the cessation criteria be based on the freezing of the straits rather than a set date window, as Michigan weather is highly variable and is likely to become even more so in the future.

The state of Michigan should prohibit tar sands oil from transportation under the strait. While oil sand and other diluted bitumen (dilbit) products may not be inherently more

⁵ Lisa Song, "Few Oil Pipeline Spills Detected by Much-Touted Sensors," *Bloomberg Business*, September 19, 2012, accessed April 28, 2015, <http://www.bloomberg.com/news/articles/2012-09-19/oil-pipeline-spills-go-undetected-by-much-touted-sensors>.

⁶ *Control Room and Supervisory Control and Data Acquisition (SCADA) Group Chairman Factual Report* (Washington, DC, April 10, 2012); "Enbridge Restarted Ruptured Oil Pipeline —Twice— During 2010 Michigan Oil Spill | InsideClimate News," accessed March 24, 2015, <http://insideclimatenews.com/news/20120530/enbridge-restarted-ruptured-oil-pipeline-%E2%80%94twice%E2%80%94during-2010-michigan-oil-spill>; "Report: Enbridge Stopped and Restarted Pipeline during Oil Spill," accessed March 24, 2015, <http://michiganradio.org/post/report-enbridge-stopped-and-restarted-pipeline-during-oil-spill>.

⁷ *Pipeline Nation: America's Broken Industry*, 2015, accessed March 24, 2015, <https://news.vice.com/video/pipeline-nation-americas-broken-industry>.

corrosive than conventional crude,⁸ it is clear from the challenges in remediating the Line 6B spill that oil sands-derived products are more difficult than conventional crude to clean up once a spill has occurred.⁹ This is particularly true for aquatic resources. A marine oil spill of bitumen – with oil that would likely sink instead of float, as it did in Marshall¹⁰ – would be orders of magnitude more damaging, and complicate cleanup in unimaginable ways. It is not evident that a true cleanup, in the traditional sense, of bitumen in the Great Lakes would even be possible.

Other Michigan Pipelines

Finally, we would remind the Task Force that, admittedly, Line 5 represents the largest and most difficult issue, but the PTF’s mandate extends to all pipelines in the state. Among other pipelines which deserve scrutiny are the MarkWest pipeline, and line 6b; there may be others, but even determining an inventory of Michigan’s currently active and abandoned pipelines has proven difficult. The MarkWest pipeline is of particular concern for our tribe. Its highest-pressure end is in Manistee County, in the vicinity of waters that are adjacent to our tribal lands. We would note that MarkWest has, through the aegis of the EPA, met with tribal representatives and has initiated a dialogue on spill contingencies and preparedness. Still, we believe that the PTF should investigate whether any of the recommendations here, or other such stipulations, should be applied to other pipelines as appropriate.

Pipeline Information

A recent investigation by the Natural Resources Defense Council investigated all fifty states to determine if oil spill incident and violation:

- information is available online,
- information is in an easy-to-use and downloadable format,
- incident dates and location data are included,
- there is a comment or text description of the violation,
- the operator name is included, and
- the violated regulation or code is cited

They found that:

⁸ National Research Council (U.S.), National Research Council (U.S.), and National Research Council (U.S.), eds., *Effects of Diluted Bitumen on Crude Oil Transmission Pipelines*, Special report / Transportation Research Board 311 (Washington, D.C: Transportation Research Board, 2013).

⁹ Anthony Swift, Elizabeth Shope, and Susan Casey-Lefkowitz, *Tar Sands Pipelines Safety Risks*, 2011, accessed January 21, 2015,

<https://xa.yimg.com/kq/groups/2137341/885521207/name/tarsandssafetyrisks.pdf>.

¹⁰ NOAA/Hazardous Materials Response Division to Liz Jones, “NOAA Oil Spill Trajectory Analysis,” August 4, 2010.

information about the frequency and nature of oil and gas company violations is only publically accessible in three states. Although 36 states have active oil and gas development, most state and federal oil and gas regulatory agencies publish little or no information regarding oil and gas companies' compliance records.¹¹

Michigan was not one of these states. They also found that applicable federal databases were incomplete and/or labyrinthine and cumbersome to use. While this report was compiled in the context of hydraulic fracturing, the same transparency principle should apply to pipeline spills – even minor ones – whether they occur on trunk lines, gathering pipes, or any place along the pipeline infrastructure. The PTF's recommendations should include full transparency of all spills of reportable size and make the information available to all online.

Another information deficiency was noted by the Government Accountability Office, namely that gathering pipeline infrastructure is increasing dramatically, but “the increase in pipeline mileage is unknown because data on gathering pipelines are not systematically collected by PHMSA nor by every state.”¹² Some gathering pipelines, particularly recently built ones, have larger diameters and operating pressures that approach those of transmission lines. There have been reports in some areas of large gathering lines being constructed near homes or environmentally sensitive areas, and that oversight of these structures has been lacking.¹³ We are further concerned that response officials may be unprepared to handle gathering line emergencies, and certainly an inventory would be the first logical step to addressing these deficiencies.

Final Report

We understand that the Task Force intends to issue its report sometime this summer. This seems like an ambitious timeline considering the broad mandate, difficult issues, and the deep analysis that is required of the PTF. Certainly, we are all anxious to see the fruits of the PTF's labor so that the real work of ensuring the safety of the Great Lakes can begin, but it is vitally important to do a complete analysis and thoroughly examine all options so that the best recommendations can be put forward.

In any case, we anticipate the chance to view, evaluate, and comment on earlier drafts of the report and its recommendations before it is finalized. Providing such an opportunity would be consistent with both the 2000 and 2007 Consent Decree consultation provisions and Executive Directive 2012-2 regarding tribal-state relations.

¹¹ *Fracking's Most Wanted: Lifting the Veil on Oil and Gas Company Spills and Violations* (Washington, DC, April 2005).

¹² Government Accountability Office, *Oil and Gas Transportation: Department of Transportation Is Taking Actions to Address Rail Safety, but Additional Actions Are Needed to Improve Pipeline Safety*.

¹³ *Ibid.*

Conclusions

We reiterate here that we believe the most responsible action with respect to Line 5 is to decommission it. Any other solution falls short of Michigan's duty to "secure to its people the prevention of pollution, impairment or destruction of its natural resources, and rights of navigation, fishing, hunting and use of its lands and waters for other public purposes." However, we offer these concrete recommendations in the event that the PTF recommends or puts forth alternatives which contemplate its continued operation. In this eventuality we can, at least, work together to ensure that it is done in the most responsible way possible to protect this great resource we all share and depend upon.

Sincerely,

Larry Romanelli
Ogema