



MEMORANDUM

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

From: Desmond Berry, Manager, GTB Natural Resources Department

Date: February 4, 2015

Re: "Line 5" pipeline extending through Straits of Mackinac

The Grand Traverse Band of Ottawa and Chippewa Indians possesses Great Lakes fishing rights reserved under the Treaty of Washington executed March 28, 1836 (7 Stat. 491). The Grand Traverse Band's off-reservation fishing rights in the Great Lakes were confirmed by federal court litigation, *see United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd*, 653 F. 2nd 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). Subsequently the federal courts confirmed that the Indian Tribes signatory to the 1836 Treaty retain property rights in the Great Lakes fishery resources:

Treaty reserved rights to access traditional fishing areas and catch fish are property rights protected by the United States Constitution. *See Mille Lacs Band of Chippewa Indians v. State of Minnesota*, 853 F.Supp. 1118, 1125 (D.Minn. 1994); *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504, 1510 (W.D.Wash. 1988).

Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources, 971 F.Supp. 282, 288 (W.D.Mich. 1995), *aff'd*, 141 F.3d 635 (6th Cir. 1998), *cert. denied*, 525 U.S. 1040 (1998).

The Straits of Mackinac is central to these Treaty-reserved fishing rights, due to the abundance of fish stocks and related spawning grounds. The oil pipelines ("Line 5") extending through the Straits of Mackinac pose a great risk to our tribal 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.

When that occurs¹, much of this heavy mixture will sink to the bottomlands, destroying spawning grounds and precluding relatively easier surface water clean up. The potential devastating harm to our Treaty-reserved fishing rights is unacceptable if less harmful alternative(s) exist.

The Grand Traverse Band's Natural Resources Department (GTB-NRD) has communicated with three federal agencies (EPA, USACE & PHMSA) requesting a comprehensive analysis of the type normally required by the National Environmental Policy Act (NEPA). Unfortunately those agencies at this time don't have authority under NEPA to review these pipelines constructed six decades ago. However, the State of Michigan does have such ability under the Great Lakes Submerged Lands Act (GLSLA) and the terms of the 1953 easement.

The GTB-NRD has reviewed presentations posted on the Task Force's web site: http://www.michigan.gov/deq/0,4561,7-135-3306_69266---,00.html
We emphasize the statement of the Great Lakes Commission: "Response technologies for heavy oil spills in open freshwater are lacking." We concur with the points made by For Love of Water (FLOW). As proposed by the organizations and governments involved in the FLOW presentation, Enbridge should be required to file a proceeding under GLSLA demonstrating that its pipelines will not substantially affect the Indian Tribes' Treaty-reserved fishing rights, the public's use of the natural resources, and the State's public trust interests.

Moreover, it must be understood that the 1836 Treaty Tribes' property right in the Straits of Mackinac fisheries resources was established in the *United States v. Michigan* litigation. The State of Michigan's duty not to interfere with these Treaty-reserved fishing rights is analogous to the State's duty to all Michigan citizens to protect and preserve the public trust in the natural resources potentially impacted by Line 5. We urge this Task Force to embrace the GLSLA process requiring the MDEQ to make a determination that "the private or public use of such lands and waters will neither substantially affect the public use thereof nor impair the public trust or interest of the State." Mich. Admin. Code R 322.1006(d). Inherent in this process should be an alternatives assessment, not merely an analysis of the status quo. MDEQ should evaluate and understand potential alternatives to the status quo of letting the old pipelines rest on state-owned bottomlands indefinitely. The GTB-NRD offers to assist the DEQ in that process.

The importance to Michigan's Indian Tribes of protecting the natural resources dependent upon the Great Lakes cannot be overemphasized. In the words of an esteemed tribal elder and former Chairperson of the Little Traverse Bay Bands of Odawa Indians:

The single most important defining element of the place we live, what makes this place unique in the entire world, is the Great Lakes and the waters that recharge these lakes from the springs, creeks, streams and rivers that make up this vast watershed. We speak for and honor the waters as the

¹ It is inevitable; sooner or later the breach will occur in that old, corroded pipeline. When that happens, not only will it be an ecological disaster, but also it will destroy the 1836 Treaty Tribes' property right in the fisheries resources. This risk is unacceptable.

life-blood of our Mother Earth as an integral part of our traditional spirituality. As Native Nations we utilize these waters to define our boundaries, transport ourselves and trade goods, fish for our food and commerce, and enjoy their value for recreation and a strong economy.

-Frank Ettawageshik²

Thank you for requesting input from Michigan's Indian Tribes. This is a situation where the interests of the State and Tribes are aligned. We must remain vigilant to preserve and protect our precious natural resources. As previously stated, the professional staff within this Department could assist the State in the GLSLA process.

² Frank Ettawageshik, *Protecting the Life-Blood of Mother Earth*, BEDOHGEIMO (Office of the United States Attorney for the Western District of Michigan, Grand Rapids, Mich.), Winter 2004-05, at 3, reprinted with permission from:

<http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1159&context=facpubs>



The Grand Traverse Band of
Ottawa and Chippewa Indians

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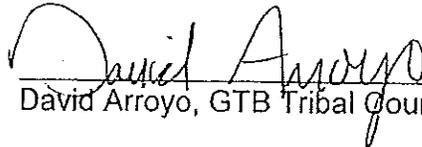
Certification of Tribal Council Action
Regular Session of February 18, 2015

I hereby certify as the Tribal Council Secretary that the foregoing Motion was Approved and Adopted at the Regular Session of the Grand Traverse Band of Ottawa & Chippewa Indians Tribal Council

NREC Report
Enbridge Oil Pipelines (Line 5)

Motion made by Tribal Council Member Bailey and Supported by Tribal Council Member Frank Wilson to approve Resolution #15-33.2602, wherein the *Grand Traverse Band of Ottawa and Chippewa Indians* resolves that the Enbridge Line 5 pipelines should be removed from the Straits of Mackinac.

4 – FOR; 0 – AGAINST; 2 – ABSENT (Pedwaydon, Shomin); 0 – ABSTAINING
Motion Carries



David Arroyo, GTB Tribal Council Secretary

cc: Bill Rastetter (for NREC)
Desmond Berry, Natural Resources Manager
Shawnee John (NR&E Administrative Assistant)
Kimberly Vargo, Executive Assistant to Tribal Council



The Grand Traverse Band of Ottawa and Chippewa Indians

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TRIBAL COUNCIL RESOLUTION

Resolution No. 15-33.2602

WHEREAS, the Grand Traverse Band of Ottawa and Chippewa Indians is a signatory to the Treaty of Washington executed March 28, 1836 (7 Stat. 491) and was restored to its former status as an Indian tribe having a government-to-government relationship with the United States by action of the Department of the Interior effective May 27, 1980, *see* 45 Fed. Reg. 18321-18322 (March 25, 1980); and

WHEREAS, the Grand Traverse Band is organized under a Tribal Constitution approved by the Secretary of the Interior on March 29, 1988; and

WHEREAS, the Grand Traverse Band has elected a governmental Tribal Council currently consisting of Alvin V. Pedwaydon, Chairman, JoAnne Cook, Vice-Chair; Thomas P. Shomin, Treasurer; David Arroyo, Secretary; Derek J. Bailey, Councilor; Frank Wilson, Councilor; and Mark L. Wilson, Councilor; and

WHEREAS, the Grand Traverse Band possesses usufruct fishing, hunting, trapping and gathering rights under the Treaty of Washington executed March 28, 1836; the Tribe's off-reservation fishing rights in the Great Lakes were confirmed by federal court litigation, *see United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd.* 653 F. 2nd 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981); and the Tribe's usufruct rights in inland areas of the treaty-ceded territory were confirmed by the November 2, 2007 Consent Decree (docket entry 1799 in File No. 2:73-CV-26, U.S. District Court for the Western District of Michigan); and

WHEREAS, the Grand Traverse Band retains property rights in the Great Lakes fishery resources: "Treaty reserved rights to access traditional fishing areas and catch fish are property rights protected by the United States Constitution," *Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources*, 971 F.Supp. 282, 288 (W.D.Mich. 1995), *aff'd.* 141 F.3d 635 (6th Cir. 1998), *cert. denied*, 525 U.S. 1040 (1998); and

WHEREAS, the Straits of Mackinac is central to these Treaty-reserved fishing rights, due to the abundance of fish stocks and related spawning grounds; 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 oil pipelines ("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, in honor of its traditional cultural heritage, the Grand Traverse Band places a high priority on the preservation and responsible use of its natural resources in the 1836 Treaty-ceded territory, including Treaty-reserved fishing fights dependent upon preservation of Great Lakes' water quality; and

WHEREAS, in 2014 the State of Michigan created the Michigan Petroleum Pipeline Task Force which met with Michigan's Indian Tribes on February 4, 2015, and inquired whether the Tribes opposed the Enbridge pipelines (Line 5) within the Straits of Mackinac; and

NOW THEREFORE BE IT RESOLVED, that the Grand Traverse Band of Ottawa and Chippewa Indians requests the State of Michigan to exercise authority under the Great Lakes Submerged Lands Act and the 1953 easement requiring Enbridge to demonstrate that its Line 5 pipelines within the Straits of Mackinac will not substantially affect the Grand Traverse Band's Treaty-reserved fishing rights forever into the future; and

BE IT FURTHER RESOLVED, that the Grand Traverse Band of Ottawa and Chippewa Indians resolves that the Enbridge Line 5 pipelines should be removed from the Straits of Mackinac.

APPROVED: JoAnne Cook
JoAnne Cook
Vice-Chairperson

ADOPTED: David Arroyo
David Arroyo
Secretary

CERTIFICATION

As Secretary of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, I hereby certify that the above resolution was approved and adopted at a regular session of the Tribal Council held in Peshawbestown, Michigan, on February 18, 2015, by a vote of 4 FOR, 0 AGAINST, 0 ABSTAINING, and 2 ABSENT.

David Arroyo
David Arroyo
Secretary



NATURAL RESOURCE AND ENVIRONMENTAL COMMITTEE

Regular Session – February 5th, 2015

Eagles Ridge

Peshawbestown, Michigan

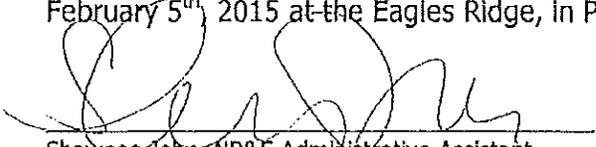
ENBRIDGE OIL PIPELINE (LINE 5)

Motion to request the Tribal Council to enact a resolution that the Grand Traverse Band of Ottawa and Chippewa Indians resolves that the Enbridge Line 5 pipelines should be removed from the Straits of Mackinaw was Made by Natural Resources and Environmental Committee Member Wilson and Supported by Natural Resources and Resources and Environmental Committee Meeting for February 5th, 2015.

9- FOR, 0 - AGAINST, 0 - ABSTAINING, 1 – ABSENT (Tom Antoine)
Motion Carries

CERTIFICATION

I, Shawnee John, certify that the above motion was made and adopted at the Natural Resource and Environmental Committee Regular Session, held on February 5th, 2015 at the Eagles Ridge, in Peshawbestown, Michigan.


Shawnee John, NR&E Administrative Assistant

February 5, 2015