

April 25, 2019

**RE: Negotiations concerning Enbridge Line 5 and the future of the Great Lakes**  
**TO: Kara Cook, Mark Totten, Steve Chester**  
**CC: Gov. Gretchen Whitmer, AG Dana Nessel**

Dear Kara, Mark, and Steve,

Thank you for meeting with us this week as you prepare to begin negotiations with Enbridge Energy over Line 5 oil pipelines and the future of the Great Lakes. Collectively, in partnership with Michigan's Chippewa Ottawa Resource Authority member tribes, we have been focusing on the threat of these high risk oil pipelines for more than five years. We have a wealth of experience and knowledge regarding Line 5 pipelines and Enbridge's pattern and practice of irresponsible and backroom dealings with Michigan officials and the public dating back at least to the devastating 2010 oil pipeline rupture in Marshall, MI. We trust that our meetings with you this week are the beginnings of a transparent process as you embark on negotiations with Enbridge. As you know, Michigan's tribes have treaty rights in the Straits of Mackinac; acknowledging and protecting tribal rights are of particular concern to us.

Given the high public interest and the stakes involved, your negotiations with Enbridge should not follow the practice of the previous administration. Rather we strongly recommend that you ensure these negotiations are open and transparent, including sharing in a timely manner, prior to any final negotiations, any policy positions you adopt or concessions you grant along the way. Further, any agreements or provisions related to or affecting the waters of the Great Lakes, the soils beneath them, and tributary streams will comply with any tribal treaty rights and interests and the rule of law, including the Great Lakes Submerged Lands Act, the state's sovereign common property in these soils and waters, public trust doctrine, and provisions of the Clean Water Act.

We again must reiterate our collective position that there are two distinct issues at play here, and the state ought to view them as two issues, not as one contingent upon the other. The first issue is one of enforcement. For decades, Enbridge has been in violation of the 1953 easement conditions, including coating damage, improper support for the pipeline in the Straits, excessive pipeline bending, lack of a credible oil spill response plan, inadequate liability insurance, and various other violations. Enbridge has known of the existence of these critical engineering and legal flaws, even while telling state officials and the general public otherwise. In response to these violations, when combined with the magnitude of risk to the Great Lakes from any resulting spill, it is our position that the pipeline should first be decommissioned.

In addition, the state has a unique duty as public trustee to protect the waters, bottomlands, and soils of the Great Lakes, our most treasured public trust resources. Therefore before negotiating further with a regulated party with a history of improper non-disclosure, we strongly recommend

that the Governor as our state's top public trustee, reassert the State's authority as sovereign and require Enbridge to apply for authorization under the Great Lakes Submerged Lands Act for the substantial change in design of the nearly 3 miles of anchor supports added to the failing original design of existing Line 5. At the same time, the Governor should issue a 90-day letter revoking the 1953 easement that allows an outdated and failing pipeline with unacceptably high risks to continue to operate through the most sensitive part of the Great Lakes ecosystem. This would not only reassert the state's authority and duty to protect the Great Lakes, but would also significantly improve your position before beginning negotiations with Enbridge.

The second issue, which is separate from the state's enforcement duty, is the issue of feasible and prudent replacement options for Line 5. Several studies which call into question the necessity of Line 5 to Michigan have been brought to your attention and will be helpful with negotiations on this point. After the state has followed through on its enforcement obligations regarding the existing Line 5 pipeline, Enbridge, like any other private entity, would be entitled to apply through the Great Lakes Submerged Lands Act and the normal course of law to build an oil tunnel through the Straits of Mackinac. This would require a feasible and prudent alternatives analysis, environmental impact studies, Michigan Public Service Commission routing approval, and several other key steps that must be taken to ensure that any such project would not cause significant harm to public trust resources and tribal treaty rights. A tunnel that is built quickly and manages to circumvent analysis and environmental review is not a win for the Great Lakes, and should not be considered as a tenable alternative. Enbridge should be required to follow our laws and comply with GLSLA just like any other private entity instead of receiving special treatment through agreements that circumvent the rule of law. .

Finally, as you begin these negotiations we urge you to consider the legacy of oil pipelines and how they help perpetuate a world dependent on carbon fuel. According to the Intergovernmental Panel on Climate Change, we have twelve years to significantly reduce carbon emissions if we want to avoid the worst effects of climate change. Governor Whitmer began her administration with executive orders to create the Office of Climate and Energy, signing Michigan onto the US Climate Alliance, and taking strides to reassert Michigan's proper role as protector of the Great Lakes. Building a new oil pipeline under the Great Lakes is wholly incongruous with this administration's action on climate change and Great Lakes protection. Any environmental impact and alternative analysis done to replace Line 5 in the straits should require the incorporation of climate change and a comprehensive climate impact analysis. We want to work with the Governor and this administration to end the threat of Line 5 in the Straits and do everything we can to have Michigan be a leader in the fight against climate change. We look forward to further meetings with you and updates on timeline and substance as your negotiations begin.

Thank you,

Liz Kirkwood, FLOW For Love of Water

Anne Woiwode, Sierra Club Michigan Chapter

Judy Karandjeff, League of Women Voters

Patty Peek, Straits of Mackinac Alliance

Joanne Cromley, Straits Area Concerned Citizens for Peace, Justice, and the Environment

Jane TenEyck, Chippewa Ottawa Resource Authority

Mary Brady-Enerson, Clean Water Action

Bill Latka, TC350

Jim Lively, Groundwork Center for Sustainable Communities

Jenya Polozova, Food and Water Watch

Greg Reisig and June Thaden, Northern Michigan Environmental Action Council

Kate Madigan, Michigan Environmental Council

Sean McBrearty, Oil and Water Don't Mix