

The Honorable Rick Snyder
Office of the Governor
P.O. Box 30013
Lansing, Michigan 48909

February 17, 2015

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

Director Dan Wyant
Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30473
Lansing, Michigan 48909

Re: Recommendation to the Task Force for State to Use the Great Lakes Submerged Lands Act and Exercise Its Perpetual Public Trust Authority to Protect the Great Lakes

Dear Governor Snyder, Attorney General Schuette, and Director Wyant:

We appreciated the opportunity to meet with you and your Administration's Michigan Petroleum Pipeline Task Force on December 15, 2014, to present our request for this Administration to act now on Enbridge's Line 5 oil pipelines located in the Straits of Mackinac through a public process under the Great Lakes Submerged Lands Act (GLSLA). This process under the GLSLA will satisfy the State of Michigan's public trust duties as well as Enbridge's duties under the 1953 easement held in trust, which states the Grantee "shall follow the usual, necessary and proper procedures for the type of operation involved, and at all times shall exercise the due care of a reasonably prudent person for the safety and welfare of all public and private property...."

We also wanted to follow up and provide the Task Force with a road map for better understanding the GLSLA process and the DEQ's public trust duty. As you know, the GLSLA regulations define public trust as "the perpetual duty of the state 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." Mich. Admin. Code R 322.1001(m). In reviewing conveyance applications, the DEQ must make an express public trust 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).

In practice, what this means is that the DEQ cannot satisfy its public trust duty by limiting its determination to a safety or risk assessment of the existing 62-year-old oil pipelines. Rather, the DEQ must protect the public trust resource and protected uses by fully examining the range of alternatives, including an alternatives risk assessment. This alternatives risk assessment typically includes these essential elements: (a) a presentation of a full range of options, (b) a presentation of the magnitude of harm, and the potential adverse and beneficial effects of each option, (c) public comments and participation, and (d) accountability for state decision-makers based on due findings and a transparent, public process.

To the best of our knowledge, the State of Michigan has never asked for or conducted a public trust analysis or made findings required by the public trust common law and the GLSLA since it issued the 1953 easement. Moreover, to our knowledge, no alternatives risk assessment has been conducted by or submitted to the Task Force. This analysis is long overdue.

Accordingly, our recommendation for the Task Force's final report is for the DEQ to apply state GLSLA law to Enbridge's Straits oil pipelines and conduct a full public review of the Line 5 oil pipelines in the Straits of Mackinac. Only through this transparent legal process can the State of Michigan satisfy its continuing public trust duties and meaningfully evaluate and assess the risks of and alternatives to the Line 5 oil pipelines occupying Lake Michigan bottomlands indefinitely.

This issue is increasingly a cause for great concern among northern Michigan communities, as well as citizens statewide. Several communities have taken the step of sending letters directly to the Governor, asking that he initiate a public review process immediately to evaluate the risks and alternatives to the Straits oil pipelines consistent with what we have described in our advocacy. We have enclosed the letters for your review as well.

Once again, we appreciate the opportunity to discuss Line 5 with this Administration and look forward to working with you to ensure that the Great Lakes and the Straits of Mackinac in particular remain the pristine jewels that our State holds so dear.

Sincerely,

James Clift, Deputy Director, Michigan Environmental Council (MEC)

Howard Learner, Executive Director, Environmental Law & Policy Center (ELPC)

Liz Kirkwood, Executive Director, For Love of Water (FLOW)

Hans Voss, Executive Director, Michigan Land Use Institute (MLUI)

David Holtz, Sierra Club Michigan Chapter Chair

Gail Gruenwald, Executive Director, Tip of the Mitt Watershed Council

Lisa Wozniak, Executive Director, Michigan League of Conservation Voters (MLCV)

Wenonah Hauter, Executive Director, Food & Water Watch

cc: Chief Deputy Attorney General, Carol L. Isaacs

Division Chief, S. Peter Manning

Deputy Legal Counsel, Valerie J.M. Brader

DNR Director Keith Creagh

Enclosures.