



Protecting the Common Waters of the Great Lakes Basin
Through Public Trust Solutions

FOR IMMEDIATE RELEASE:

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Fate of Line 5 and the Proposed Tunnel Far from Final, While Oil Spill Risk to the Great Lakes Continues to Ratchet Up

The legal battle over Line 5 and a proposed tunnel replacement that threaten the Straits of Mackinac is far from over despite a Thursday court ruling, FLOW said today.

The Michigan Court of Claims ruled on Thursday that Public Act 359 of 2018 establishing a tunnel authority is constitutional. But the Court left open serious legal questions surrounding the use of Great Lakes waters and soils under them. Meanwhile, Enbridge's current Line 5 oil pipelines continue to pose an unacceptable risk to the Great Lakes and the *Pure Michigan* economy.

The Attorney General [announced](#) that she will appeal this decision: "The State of Michigan will not rely on a foreign corporation to protect and preserve our state's most precious resource, its Great Lakes." In addition, the Attorney General released a [stunning report about Enbridge's financial liability](#), concluding that Enbridge seriously misrepresented its financial holdings when it struck a deal in late 2018 with the Snyder Administration. The report found that the Enbridge subsidiaries to the Snyder Agreements would not have the financial resources to clean up a multi-billion oil spill disaster, leaving the people of Michigan on the hook.

The Court of Claim's decision is only one part of a wide range of major legal requirements and disputes that must be resolved before Enbridge can go forward with a proposal to build a tunnel or continue using the compromised condition of the existing Line 5 in the Straits. At the end of his decision, Judge Michael Kelly made it very clear that he was not deciding the public trust law and requirement raised by FLOW and the City of Mackinac Island and tribes in their amicus legal arguments that were filed with the Court.

"This decision is just one step," said Liz Kirkwood, Executive Director of For Love of Water (FLOW). "Enbridge and others have a long way to go, with fundamental review and evaluation of risks and alternatives before the proposed tunnel can actually go forward."

"The legal and factual reality is that Enbridge cannot build a tunnel without express authorization from the DNR and EGLE under the public trust laws that apply to the State of Michigan's Great Lakes bottomlands and waters," Jim Olson, President and Legal Advisor at FLOW said. "Enbridge has not obtained such authorization—not for the tunnel and, frankly, not for the right to continue using the fragile and dangerous existing Line 5 oil pipelines in the open waters of the Straits."

First, Enbridge must comply with a range of requirements, including several authorizations required for occupancy and use of the soils under the Straits of Mackinac under public trust law and the Great Lakes Submerged Lands Act. The fact is none of the agreements or easements required for the tunnel have been authorized under this law.

Second, the legality of the three miles of multiple spans of the existing Line 5 pipelines is at stake in the pending contested cases filed by the City of Mackinac Island, Grand Traverse Band, and Straits of Mackinac Alliance before a State administrative law judge and eventually the courts.

Third, the lawsuit filed by Attorney General on behalf of the people of Michigan against Enbridge is moving forward in the circuit court of Ingham County. The validity of the existing line and the requirement for authorization under public trust and the GLSLA in Michigan are at the heart of this lawsuit.

“All citizens and communities in Michigan must understand that the public trust laws protecting our Great Lakes do not allow private persons or corporations to control these waters and the soils under them for primarily private ends,” Olson said. “This is the [paramount](#) question governed by narrow standards under the rule of law.”

“Continuing Line 5 without applying the rule of law exposes 20 percent of the world’s fresh surface water to private control and to a potential ecological disaster,” Kirkwood said.

Background:

On June 6, Canada’s Line 5-owner Enbridge sued the State of Michigan to [resuscitate a ‘Line 5’ oil tunnel deal](#) and law rushed through in late 2018 at the end of the Snyder administration. Attorney General Dana Nessel in late March declared the oil tunnel law [unconstitutional](#), triggering Gov. Gretchen Whitmer to call an all-stop on state involvement in any tunnel activities. The [hastily crafted law](#) sought to give away Great Lakes public trust bottomlands to Enbridge for 99 years for a private oil tunnel, while allowing the aged, dangerous existing Line 5 oil pipelines in the Straits to continue operating for another decade as the tunnel is considered and possibly built.

Prior to the Oct. 31 Court of Claims decision, the attorney general’s opinion on Public Act 359 had the effect of binding state agencies and voiding the tunnel agreement called for by the law, and also nullifies the legal effect of the [side agreements](#) reached between the state of Michigan under then-Gov. Rick Snyder and Line 5-owner Enbridge. Those agreements would allow continued oil pumping through the Straits, where Lake Michigan meets Lake Huron, and an easement and 99-year lease of Great Lakes public bottomlands to Canadian-based Enbridge for private control of the tunnel for its own gain.

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