



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

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**Public Comment to
Michigan Pipeline Safety Advisory Board
from FLOW's President and Legal Advisor, James Olson
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It's time for our state government to stop treating our 1963 Constitution, statutes and common law as nice but meaningless environmental policy statements and start treating them as the duty the people through the Constitution and our courts have mandated.

FLOW has submitted a number of reports to the State on crude oil transport through Michigan, particularly the antiquated and dangerous twin pipelines operated by Enbridge Energy in the Straits of Mackinac. When FLOW appeared before the Pipeline Task Force created by Governor Snyder, it and other organizations urged the State to bring Enbridge Line 5 under the "rule of law." Enbridge Line 5 raises serious concerns related to the violation of the constitution and laws of Michigan that mandate the protection of air, water, natural resources of the state, and the public trust in those resources.

Michigan's constitution and laws, and the binding decisions of our appellate courts, impose a duty on our state agencies to protect the paramount interests of citizens and communities in the protection of air, water, natural resources, public trust and public health. From the 1970s through the 1980s, Michigan developed one of the strongest, most highly respected legal frameworks for active citizen participation and strong regulatory protections of air, water, environment and public health in the United States. A centerpiece of these laws and court decisions is the duty to review of projects that required government approval through public participation and comprehensive assessment and determination of the potential effects on water, environment and health and alternatives that where avoided or minimized those effects consistent with the state's paramount concern for its environment and public health.

Unfortunately, over the past several years, this protective, participatory framework has fallen into shambles. The State has ignored or breached this mandatory duty to consider and determine effects, alternatives, and protect our air, water, and health from pollution or impairment. Governmental review has been narrow, shallow, and with little or minimal public notice or participation.

Last fall, it took a seasoned journalist to uncover a major permit about to be issued to a bottled water company to withdraw massive quantities of water from a headwater creek system in mid-Michigan, with less than a week remaining for public comments or participation. The law required public notice and at least 45 days for public comment. This attitude of expediency over prudence and protection has reached a crisis level in state governance. This is not the fault of dedicated, competent employees and staffs of the Departments of Environmental Quality and Department of Natural Resources. The blame falls on legislators and political leaders who put expediency, politics, and slashed budgets over the rigorous review and protection of water, environment, and public health.

Case in point: Our state agencies involved in the approval of the siting, improving, and expanded volumes of the flow of crude oil through Enbridge Line 5 and Line 6b (which runs from the southwestern part of the state to Port Huron before crossing into Canada) have totally failed to comply with this mandatory duty to consider and determine likely effects and alternatives. Approvals by the MPSC and MDEQ regarding Enbridge's Lines 5 and 6b have not complied with this mandatory duty.

The MPSC and MDEQ have nearly collapsed their consideration and determinations of effects and impacts and alternative routes or capacity by allowing Enbridge to divide its expansion project into many narrow segments, presumably calculated to limit the scope of consideration of impacts and alternatives to each segment. In effect, this was like looking at the effect of clipping each toe-nail rather than the effects and alternatives of the whole elephant—a near doubling of crude oil pipeline capacity in Michigan. While others debated the impacts and alternatives to the Keystone XL down through the western U.S., Enbridge launched a massive expansion through the Great Lakes and Michigan—in Michigan, we ended up with the Enbridge “Great Lakes XL.”

Inexplicably, this was done without any public notice, comment, and participation regarding this true project purpose in Michigan. Even though the MPSC and DEQ have independent authority and legal responsibility to consider the effects and alternatives of the location and siting of this massive expansion and substantial upgrade of the pipeline system in Michigan, Enbridge has not been required to comply with the legal requirements for a comprehensive impact statement and showing by Enbridge that there are no likely or potential ill effects or there exist no alternatives to this massive expansion and upgrade of the company's pipelines through Michigan.

This is unconscionable, unlawful, and a flagrant violation of the duties imposed on the State by our state constitution and laws. In the past few years, Enbridge has implemented its plan to greatly expand crude oil pipeline transport to more than 800,000 bpd from Alberta through its Great Lakes-Michigan Lakehead System. Applications to the MPSC and MDEQ, along with news releases and reports, show a multi-billion dollar investment to nearly double the capacity of its entire Lakehead system. MPSC documents show that the original capacity of 120,000 bpd in Line 5 could be increased to 300,000 bpd by the addition of 4 pump stations. In the past few years, Enbridge has invested tens of millions to increase the capacity of Line 5 to 490,000 bpd, and most recently to

540,000 bpd by a major new arrangement for 12 pump stations and the addition of more than anti-friction injection facilities to increase capacity to meet the 600 psi limit for the line in the 1953 Easement. Nothing in the 1953 easement giving Enbridge permission to use the bottomlands of Lake Michigan where Line 5 crosses the Straits suggested, even remotely, a four-fold increase.

After the original 30-inch diameter Line 6B that was constructed across Lower Michigan in 1969 ruptured in 2010, Enbridge applied to the MPSC for approval of a new 36-inch replacement Line 6b from Indiana to Sarnia (ironically, public records show that Line 5 was approved in 1953 to save Enbridge money rather than constructing a line across Lower Michigan). Enbridge applied for short segments of the new replacement line or the addition of pump stations. Like its applications for almost doubling the capacity of Line 5, Enbridge described its project purpose as line “maintenance” and “integrity.” By the time MPSC approved each small segment, Enbridge had a new replacement line that increased capacity from 400,000 bpd of old Line 6b to 800,000 bpd for the new 6b (now called Line 78).

For example, in 2012, MPSC approved Enbridge’s application to “replace a 50-mile segment” of existing Line 6b between Ingham and Oakland counties. It did not mention this was to double crude oil from Canadian “tar sands” through Lower Michigan. At about the same time, MPSC approved four new pumping stations to increase capacity to 800,000 bpd in this new 36-inch line. (A map showing eight segments, and several pump stations, is attached to this statement for your convenience) During this same time, the MPSC approved Enbridge applications for several new pumps stations and many anti-friction injection stations to increase the flow or volume rate of crude oil in Line 5. Once again, Enbridge represented these modifications as “maintenance” or “repairs.” Enbridge has done the same in applying to the MDEQ for anchor supports for Line 5 along the 4.5 mile stretch of the twin-pipelines in the Straits of Mackinac. Even in Enbridge’s recent May10, 2017 application for anchor supports in the Straits, the company beguilingly states that it “plans to conduct maintenance... by installing anchor support structures.”

To date, the MPSC and MDEQ have not considered or determined the full environmental impacts and the alternative routes, capacity, or modifications for doubling crude oil transport from 700,000 bpd to 1,340,000 bpd in the Straits and in Michigan. Citizens, communities, businesses, property owners and our air, water, and natural resources have been blatantly ignored and deprived of their right to notice, participation and involvement in a matter that strikes at the core of quality of life and as the slogan says, “pure Michigan.”

It is time to address this crisis in State governance. It is time to correct this violation of by the State and Enbridge of the constitutional and legal duty to protect citizens’ public health and our air, water, natural resources and public trust (in those resources). It is time to correct the failure of our agencies and Enbridge to correctly disclose and comprehensively consider potential effects and the existence of alternatives through proper public notice and comment, participation, and transparent comprehensive consideration and determinations under the rule of law.

You as members of the Pipeline Advisory Board are urged to exercise your authority granted by Governor Snyder’s Executive Order 2015-12, and recommend that the MDEQ, MPSC, and Attorney General take all necessary and prudent steps to require Enbridge prove before the MPSC and MDEQ that (1) there is no likely risk of catastrophic harm to the Straits, our waters, fish, drinking water, riparian and public trust uses, and ecosystem from the continued transport of crude oil in the Straits,

and (2) there exist no alternative routes, capacity, or modifications to other pipelines to accomplish the overall purpose of the Enbridge's Lakehead System.

Thank you.

James Olson, President and Legal Advisor