



NO STRAITS PIPELINE

Art by Pat Perry

# FLOW Webinar— The Battle Over Line 5: The Legal Fight for Our Public Waters

July 29, 2021  
1:00 - 2:15 p.m.



**Oil & Water Don't Mix**  
Keep Oil Out of the Great Lakes









**Mackinac Island**

---

community foundation<sup>SM</sup>

---



-  Oil pipeline indicating principal direction of flow
-  Proposed pipeline
-  Natural gas pipeline slated for conversion to oil
-  Storage or pumping facility
-  Major aquifer
-  Native American reservation



# Questions for Our Panelists?

*Please enter your questions in the:*

- **Zoom Q&A**
- **FLOW's Facebook Live comments**

## Meet Our Panelists



**Stanley "Skip" Pruss**  
FLOW Legal Advisor &  
Former Dir. of MI Dept. of  
Energy, Labor, and Economic  
Growth & Chief Energy  
Officer for MI

**Christopher Clark**  
Supervising Senior Attorney at  
Earthjustice, representing Bay  
Mills Indian Community



**Sean McBrearty**  
O&WDM Campaign Coord. &  
Legislative and Policy Dir. at  
MI Clean Water Action

Moderator:  
**Liz Kirkwood**  
Executive Director  
FLOW (For Love of Water)



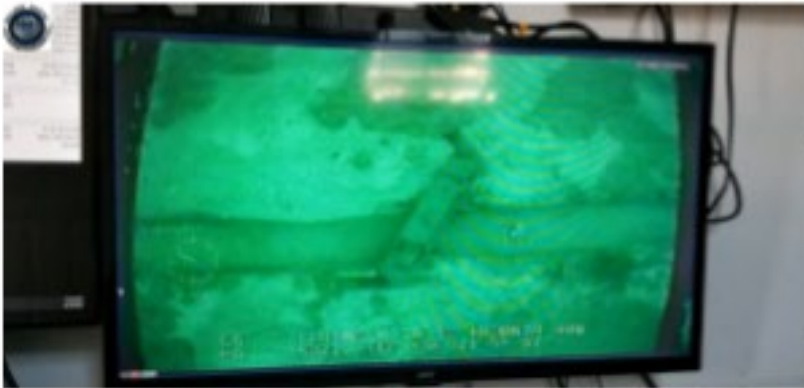


Photo credit: Enbridge Energy

[Enbridge allowed to reopen portion of damaged Line 5 in Straits of Mackinac, judge rules](#)

4/24/2018 4:42:35 PM



H: 286.2 °  
D: 233.62 ft  
Temp: 50.3 °F

MICHIGAN

# Enbridge retrieves 15,000-pound anchor from Straits of Mackinac

**Beth LeBlanc** The Detroit News

Published 5:21 p.m. ET Jul. 26, 2021

[View Comments](#)



Enbridge Energy has said it recovered a 15,000-pound anchor from between two spans of the Line 5 oil pipeline in the Straits of Mackinac.

The anchor, which was left in the water Wednesday, was recovered Sunday using a crane on a barge, the company said.

The anchor was left on the lake bed, about 500 feet from either span, after a cable detached that had connected the anchor to an Enbridge contractor's barge that was doing seasonal maintenance.

The state directed Enbridge to retrieve the anchor last week after receiving notification from the company regarding the mishap.







# Whitmer orders Enbridge Line 5 shutdown, citing easement violations



November 13, 2020



[Kelly House, Jonathan Oosting](#)



[Michigan Environment Watch](#)



[Enbridge, Gov. Gretchen Whitmer](#)

## Whitmer moves to close Line 5 pipeline

Michigan Gov. Gretchen Whitmer has ordered the shutdown of the dual-span Line 5 pipeline, which crosses the Straits of Mackinac as it transports petroleum products from Wisconsin to Ontario. Tunnel opponents have long called for a shutdown, warning that a rupture would cause a catastrophic oil spill in the straits.



# Stanley "Skip" Pruss

## FLOW Legal Advisor



Former Dir. of MI Dept. of  
Energy, Labor, Econ.  
Growth

# **Enbridge Line 5: Upholding the Public Trust in the Great Lakes**

- November 2020 - the State revoked and terminated Enbridge's 1953 Easement
- Based on Public Trust Doctrine - Great Lakes waters and bottomlands belong to the public
- Line 5 presents and imminent risk of catastrophic harm
- Enbridge refused to shut down the line - instead filed a federal court action attacking state sovereignty and title in the Great Lakes.



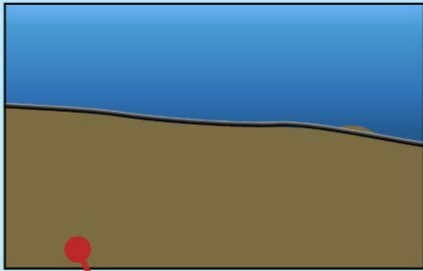
## Line 5: Failing Infrastructure and Unacceptable Harm



Bare Metal

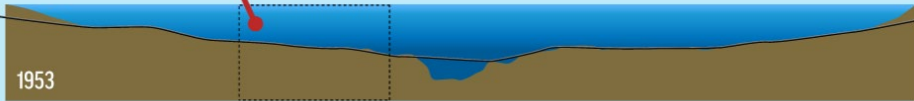


Broken Supports



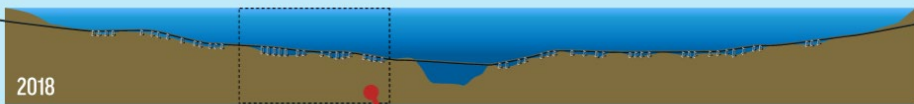
**IN 1953**

the Line 5 pipeline was designed to lay directly on the lakebed.

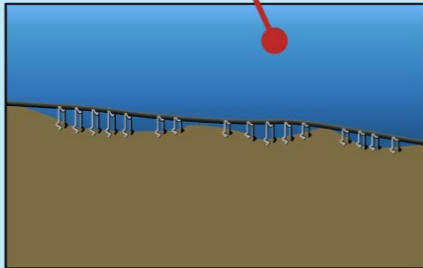


1953

Straits of Mackinac



2018



**BY 2018**

127 anchor supports have been added to support the pipeline in areas where the lakebed has been washed away. The pipeline is now elevated in the water in several places.

- The 1953 Dual Pipelines—original design called for pipelines to be buried or lay on bottomlands; minimize spans
- Since 2001, State has issued “repair” and “maintenance” permits for over 217 structural supports to stabilize the failing dual pipelines.
- Major structural change—more than 3 miles of suspended pipes has never been evaluated for occupancy and use of the Straits waters and bottomlands.

# Risk Factors Supporting a Permanent Shutdown of Line 5

- 1. Anchor strikes**
  - a. June 1979 - Consumers Power Co. cables cut
  - b. April 2018 - Tugboat dropped and dragged anchor
  - c. May 2020 - Vessels likely under contract to Enbridge struck pipelines and supports
  - d. July 2021 – 15,000 lb anchor detached between the pipelines
- 2. Cable or chain drags; catenary events**
- 3. Current-induced stress**
- 4. Vessel density - high potential for accidents**

# Unacceptable Risk and Catastrophic Harm to Health, Waters, Economy, and Environment

- The 2018 Risk Analysis - conservative damage estimate of \$1.8 to 2 billion
- MSU Damage Analysis - \$6 billion
- Updated MSU Analysis - Two-week shut down of Soo Locks: \$45 billion
- Affirms that Line 5 presents an unacceptable risk to the Great Lakes, economy, and *Pure Michigan* way of life



## Legal Actions

- ***People of Michigan v. Enbridge***  
*Filed June 27, 2019*
- ***State of Michigan v Enbridge***  
*Filed November 13, 2020*
- ***Enbridge v Gretchen Whitmer, Governor, and Dan Eichinger, DNR***  
*Filed November 24, 2020*



# **USACE Orders Environmental Impact Statement June 2021**

- Tribes, FLOW, ELPC, NWF, and OWDM submitted extensive comments urging the Army Corps Of Engineers to require an Environmental Impact Statement under the National Environmental Policy Act
- Necessary to examine geotechnical information and determine environmental and climate impacts
- May take 3 years or more – continued operation of Line 5 unacceptable

# The Michigan Public Service Commission

**Application for authorization  
of the 99-year Line 5 tunnel  
and pipeline in the Straits of  
Mackinac**

- MPSC ruled that the scope of review must include environmental and climate change impacts.
- Determined Michigan Environmental Protection Act applies *both* to tunnel construction *and* the petroleum products transported
- Determine the “feasible and prudent alternatives” must be considered
- Declined to review “public need” for entire pipeline
- Currently in discovery phase, trial-type hearings begin in early 2022 and end in late 2022.

# Department of EGLE Approved Tunnel Pipeline

- The Department of Environment, Great Lakes, and Energy approved permits for wetlands, water quality
- Declined to consider:
  - Michigan Environmental Protection Act
  - Environmental impacts along the entire line 5
  - Address GHGs and climate change impacts
- Did not consider geotechnical data necessary to evaluate risks of tunnel and pipeline in unconsolidated loose materials
- Earth Justice filed a petition to contest the permit on behalf of the Tribes.



# Line 5 Pipelines: Non-Essential Infrastructure



- Global sales of ICE vehicles peaked in 2017, Global oil demand likely peaked in 2019
- GM & Mercedes to exit fueled autos by 2035, Volvo / Ford Europe by 2030, VW by 2026, Jaguar by 2025
- California and Massachusetts prohibit ICE sales after 2035 – ten other states likely to follow soon
- European Union's 27 countries propose banning the sale of gasoline and diesel cars by 2035
- 10,500 cities have committed to reducing CO2 emissions



# Financial Management Concerns

## PNB Paribus

*“The economics of oil for gasoline and diesel vehicles versus wind-and solar-powered EVs are now in relentless and irreversible decline, with far-reaching implications for both policymakers and the oil majors.”*

## Veritas Investment Research

*“Canadian oilsands assets with a potential price tag of \$13.4 billion may be up for sale as oil majors divest their heavy oil assets in Western Canada.... Given the pressure to both cut emissions and invest in renewable energy, we expect the super majors to shed mostly upstream oil and gas assets to fund investments into renewables,”* July 14, 2021



**Tar sand oil is the most costly to produce –  
first to be curtailed**





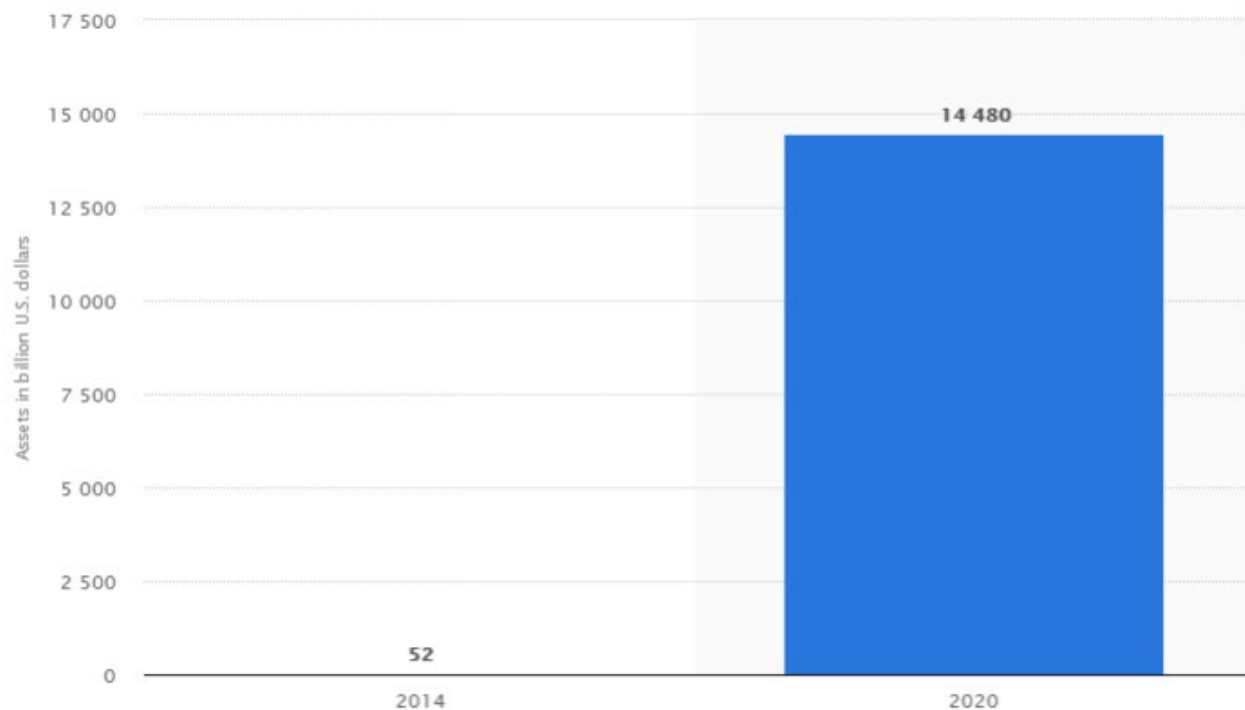
# Divestment

- As of 2020, over 1100 institutions having assets of \$14.4 trillion have pledge to divest from fossil fuels.
- Over 120 universities and colleges have committed to fully or partially divest their holdings in fossil fuel companies.



# Value of fossil fuel divestments worldwide in 2014 and 2020

*(in billion U.S. dollars)*





# Financial Institutions Curbing Lending for Pipelines and Alberta Tar Sands

- World Bank
  - BlackRock (world's largest asset manager)
  - BNP Paribas Group (largest bank in Europe)
  - HSBC (2<sup>nd</sup> largest bank in Europe)
  - Norway Sovereign Wealth Fund (world's largest investment fund)
  - European Investment Bank
  - California Employee Pension Fund
  - Rockefeller Fund
- 

**World's  
Largest  
Insurers  
Finding  
Fossil Fuel  
Present Too  
Many Risk  
Factors**

**Insurers moving away from coal and pipeline companies:**

- Lloyds of London
- The Hartford
- Swiss RE
- Zurich Insurance
- Munich RE
- Axis Capital Holdings Ltd.
- Chubb Ltd.



# Tar Sand Production – existential challenges

*“Moody’s  
downgraded the  
creditworthiness of  
Alberta’s debt to its  
lowest level in 20  
years, citing, among  
other concerns, the  
province’s  
dependence on the  
oil sands and the  
environmental costs  
of extracting the oil.”*

Canada’s Supreme  
Court has upheld the  
national carbon tax  
challenged by  
Alberta – it will now  
add a \$30 per ton tax  
to its tar sands  
operations

NYT December 2020



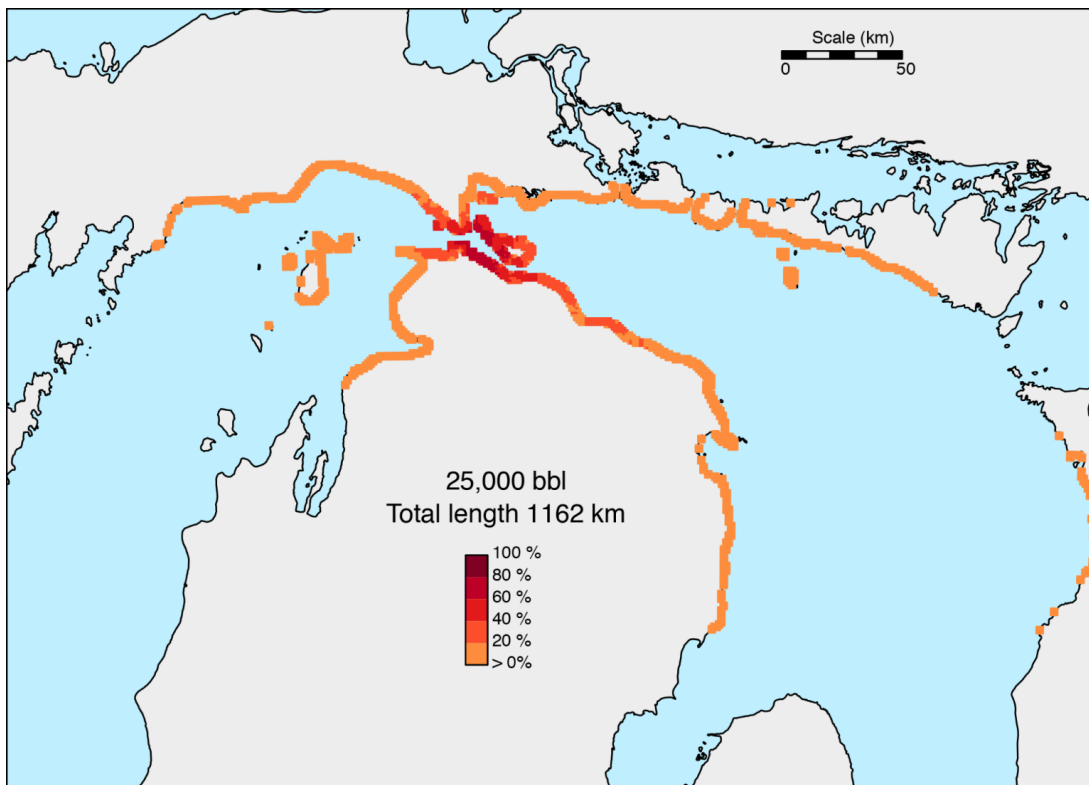
## Analysis of the Enbridge Financial Assurances

1. **Enbridge, Inc., a Canadian corporation, is not a signatory** to any of the agreements made with the Snyder Administration.
2. The **subsidiaries** who signed the agreements with the Snyder administration **do not have the financial wherewithal** to address the consequences of a Line 5 rupture.
3. **Enbridge, Inc. is not contractually obligated** to stand behind the indemnity agreements of its subsidiaries.

**Key Point: Enbridge Inc. has provided no legally enforceable financial assurances** to the State of Michigan, Tribes, or coastal communities.

## International Joint Commission Survey

88 percent of Great Lakes region residents state that protecting the lakes is important and are even willing to pay for restoration



# Christopher Clark

Supervising Senior Attorney,  
Earthjustice, representing  
Bay Mills Indian Community





# Bay Mills, Native American Rights Fund and Earthjustice in Partnership





# 1836 Treaty of Washington

- The Ojibwa and Odawa signatories ceded 14,000,000 acres of land to the United States.
- In exchange, the Tribes reserved the right to hunt, fish, and gather within the ceded territory.

Map: Little Traverse Bay Band of Odawa Indians, Natural Resources Department.



# Banishment of Enbridge Energy

- Resolution passed in May 2021

"Beheaded" Artwork by Elizabeth LaPensée, Anishinaabe, Métis, and Irish from Lansing, MI.



# Sean McBrearty

O&WDM Campaign Coord.  
& Legislative and Policy Dir.  
at MI Clean Water Action





# **Oil Industry Playbook for Political Influence**

A look into Enbridge's common tactics in Michigan and Minnesota



## **Enbridge's Political Influence**

- + The role of political spending in Lansing
- + Line 5 and money in politics
- + Part of a larger pattern

## **Step 1: “Charitable contributions” and buying support**

- + MI Radio sponsorship
- + St. Ignace whitefish giveaway
- + Kalamazoo County boat controversy, 2017
- + MI Association of Counties sponsorship

## **Step 2: Control the Media Narrative**

- + Faux-grassroots efforts
- + Consumers Energy Alliance
- + Tunnel Coalition
- + Large media buys- more \$ means a bigger mouthpiece

## **Step 3: Exert Influence/Divide and Conquer**

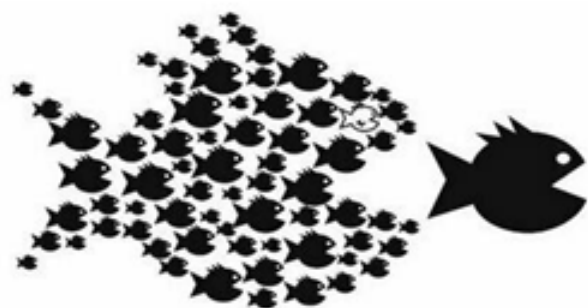
- + Enbridge Reportable Lobbying in MI Legislature 2010-2020: \$580,502.51 (\$292,958.64 in 2019 and 2020 alone)
- + 2018 MI Chamber contribution
- + Weaponization of Indigenous Culture
- + Trespassing in MI
- + Northern Lights Task Force in MN



## **Enbridge's legal delay tactics serve a political purpose**

- + 2022 Election
- + Influence of dark money in politics
- + Enbridge makes est. \$1.4-1.8 million daily from Line 5

## **Grassroots must answer**



**ORGANIZE!**

- + Grassroots initiatives cannot match industry financially
- + We win by organizing- broad public education, engagement, and base-building
- + Over 80,000 Constituents took action in 2019/20

# TAKE ACTION

## Public Engagement in Proposed Line 5 Oil Tunnel

**1. U.S. Army Corps Public Engagement in EIS Process for Proposed Tunnel**

**2. Stay updated on Michigan Public Service Commission (MPSC) Proceedings**

**3. Stay updated on Environment, Great Lakes and Energy (EGLE) Proceedings**

***Stay Tuned to FLOW's e-newsletter & Join O&WDM for Take Action Updates!***



**US Army Corps  
of Engineers®**

# TAKE ACTION

## Here's How You Can Help Shut Down Line 5!

### THANK GOV. WHITMER

[Gretchen.whitmer@michigan.gov](mailto:Gretchen.whitmer@michigan.gov)

### PLANT A YARD SIGN



### SPEAK UP

Write a letter to the editor.  
 Help pass a local resolution.  
 Become a business supporter.

### DONATE

to FLOW & O&WDM

[forloveofwater.org](http://forloveofwater.org) and  
[oilandwaterdontmix.org](http://oilandwaterdontmix.org)

### STAY INVOLVED

Sign up for FLOW's e-newsletter & join O&WDM.

Follow FLOW & O&WDM on FB  
& Instagram

### SIGN PRESIDENT PETITION

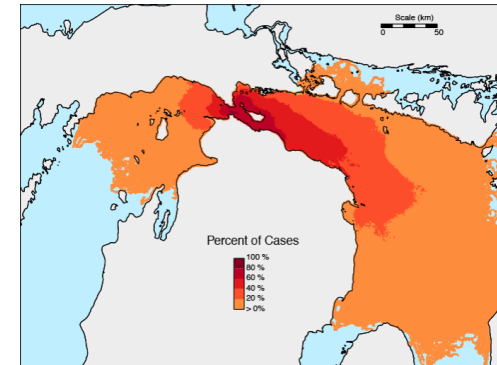
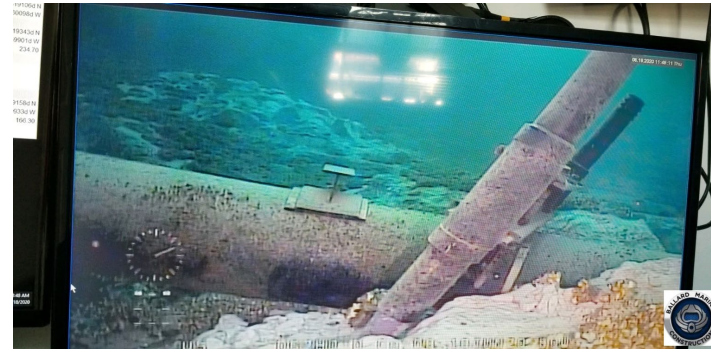
Petition to President  
Biden



# Donate to Support Our Efforts to Shut Down Line 5

(Note: See Zoom chat box & FLOW's Facebook Live for these hyperlinks.)

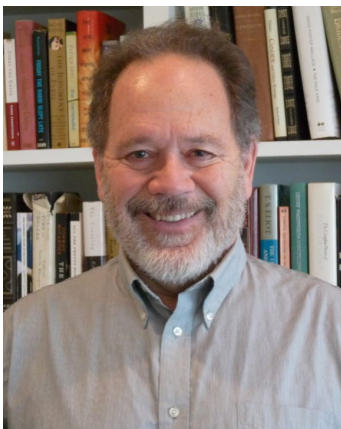
- [Donate](#) to **FLOW** -- Protect the Great Lakes now and for generations to come.
- [Donate](#) to **Oil & Water Don't Mix** -- We won't rest until the flow of oil is shut down.



## Questions for Our Panelists?

*Please enter your questions in the:*

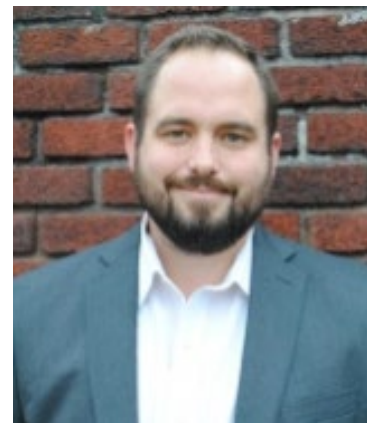
- **Zoom Q&A**
- **FLOW's Facebook Live comments**



**Skip Pruss, FLOW**



**Christopher Clark,  
Earthjustice for Bay Mills**



**Sean McBrearty,  
O&WDM & MI CWA**

# Thank You for Joining Us!



**Stanley "Skip" Pruss**, FLOW  
[pruss@5lakesenergy.com](mailto:pruss@5lakesenergy.com)  
[www.ForLoveOfWater.org](http://www.ForLoveOfWater.org)



**Sean McBrearty**  
 O&WDM & MI Clean Water  
 Action  
[smcbrearty@cleanwater.org](mailto:smcbrearty@cleanwater.org)  
[www.OilandWaterDontMix.org](http://www.OilandWaterDontMix.org)



**Oil & Water Don't Mix**  
 Keep Oil Out of the Great Lakes

**Christopher Clark**  
 Earthjustice, representing  
 Bay Mills Indian Community  
[cclark@earthjustice.org](mailto:cclark@earthjustice.org)  
[www.Earthjustice.org](http://www.Earthjustice.org)



**Liz Kirkwood**  
 FLOW  
[liz@flowforwater.org](mailto:liz@flowforwater.org)  
[www.ForLoveOfWater.org](http://www.ForLoveOfWater.org)

