



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

September 20, 2021

**The Mackinac Straits Corridor Authority and Board Members**

Mr. Michael Nystrom, Chairman nystromm@michigan.gov	Mr. Paul F. Novak, Member Pnovak@weitzlux.com
Mr. Anthony England, Member england@umich.edu	Mackinac Straits Corridor Authority DNR-StraitsTunnelComment@michigan.gov

VIA ELECTRONIC SUBMISSION

Dear Honorable Members of the Mackinac Straits Corridor Authority:

Thank you for setting up the public information session today. The importance of the issues surrounding the decisions you face as members of the Authority cannot be overstated. This is particularly the case, because while the information regarding the details of construction, geotechnical, risk, health, environmental, and tribal and cultural issues remain crucial, the patently lack of authorization under the State's public trust laws, statutes, and duties lays bare a fundamental question that must be answered and complied with before further investments of time, money, and resources by the State and Enbridge. In the absence of such authorizations for the tunnel easement, our assignment to Enbridge, the 99-year lease, and the purported right of continued occupancy under paragraph 4.2 of the Third Agreement, the continued movement forward continues to put the State and Enbridge, and the State's citizens at risk.

FLOW and many organizations, appeared and testified before this Authority on Friday, March 6, 2020. At that time, [FLOW submitted a legal analysis and comment](#), dated March 5, 2020, and on March 6, 2020 made an oral presentation to the Mackinac Straits Corridor Authority ("MSCA" or "Authority") that is part of the record in this matter. FLOW reiterated these comments in a statement to the Authority on February 3, 2021.

I realize that there are new members of the Authority, so, I have attached the above link to this analysis and incorporate the above comments and statements into the comments below. Without waiving the several points contained in FLOW's analysis and comments, today, I want to underscore the fact and law that the DNR Easement, the Assignment from you to Enbridge, and the Tunnel Agreement provisions calling for a 99-year lease have not been authorized under the rule of law of the public trust doctrine:

1. These documents are subject to the GLSLA, 324.32502-32508 and rules, but to date the agreements and conveyance documents have not been authorized under the GLSLA;
2. The DNR Tunnel right of way or Easement purports to be authorized under Act 10, now MCL 324.2129, for a public utility easement. However, the DNR has never authorized it based on the

required findings under the public trust doctrine, an absolute necessity based on the position of the State, AG Nessel, and DNR in the Ingham County cases: Nessel v Enbridge; and State Governor and DNR Director v Enbridge.

Until this authority is obtained by Enbridge, no contracts should be signed, no monies spent, and no construction commenced; to do so, would be at MSCA's and Enbridge's own risk. For this reason, you, the members of MSCA, are requested, respectfully, to ask for an Opinion of Attorney General Dana Nessel, on the serious question of the lack of required authorization of the 2018 Easement, the Assignment of Easement, and the Tunnel Agreement/99-Year Lease Agreement for occupancy and use of the State's sovereign public trust bottomlands and waters of the Great Lakes.

Thank you. Should you have any questions, or your AG staff have questions, we remain available to discuss the same.

Sincerely yours,

James Olson  
Founder and Sr. Legal Advisor  
For Love of Water (FLOW)

(FLOW President Jim Olson made the above statement to the Mackinac Straits Corridor Authority during a February 3, 2021, public meeting regarding the Line 5 Easement, Assignment, Tunnel Agreement, and 99-year lease.)