



Ensuring the Waters of the Great Lakes Basin Are  
Healthy, Public, and Protected for All

February 14, 2022

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

Mr. Michael Nystrom, Chairman <a href="mailto:nystromm@michigan.gov">nystromm@michigan.gov</a>	Mr. Paul F. Novak, Member <a href="mailto:Pnovak@weitzlux.com">Pnovak@weitzlux.com</a>
Mr. Anthony England, Member <a href="mailto:england@umich.edu">england@umich.edu</a>	Mackinac Straits Corridor Authority <a href="mailto:DNR-StraitsTunnelComment@michigan.gov">DNR-StraitsTunnelComment@michigan.gov</a>

[VIA ELECTRONIC SUBMISSION](#)

Dear Honorable Members of the Mackinac Straits Corridor Authority (“MSCA”):

Thank you for the opportunity to comment.

FLOW urges the MSCA to suspend further consideration of this ill-conceived project until Enbridge seeks and obtains legal authorization to occupy state bottomlands from appropriate state agencies.

We have previously provided the MSCA with detailed analyses of this issue and hereby incorporate those by reference in lieu of repeating them here. See [FLOW's September 21, 2021 Letter](#); [FLOW's March 5, 2020 Comments](#); [FLOW's December 18, 2018 Comments](#); oral testimony to the MSCA on March 6, 2020, February 3, 2021, and October 13, 2021. Suffice to say, Enbridge has not received authorization from EGLE to occupy state-owned bottomlands under the Great Lakes Submerged Lands Act, 324.32502-32508 and rules. Nor has the DNR made the required public trust findings to authorize a public-utility easement under Act 10, now MCL 324.2129. Without such authorization, Enbridge does not have a “legal warrant” to occupy state-owned bottomlands. See *Obrecht v. Nat’l Gypsum Co.*, 361 Mich. 399, 416 (1960). Thus, it would be a waste of time and resources for the MSCA to continue considering Enbridge’s proposal at this time.

If the MSCA decides to the peril of Michiganders to disregard Enbridge’s lack of authorization for this project, it must contend with the fact that Enbridge’s proposal to build a new oil pipeline inside a new tunnel underneath the Straits of Mackinac has ballooned into a supersized infrastructure project. In comparison to the original project, the diameter of the tunnel will now require a tunnel boring machine four times the size initially proposed. Correspondingly, the amount of excavated material that must be transported and disposed of has quadrupled. Testimony from Enbridge’s geotechnical expert, Michael Mooney, before the Michigan Public Service Commission (“MPSC”) indicates that the tunnel must also be bored deeper than the original design, stating: “*The depth to rock was determined to be deeper than assumed during the Alternative study and the resulting vertical profile takes the tunnel deeper in order to remain fully within rock. The geotechnical investigation also revealed highly fractured rock in places that would yield high groundwater pressures during construction.*” On file with the MPSC, pp. 19-20. Yet Enbridge’s initial \$500 million estimate of the cost of the tunnel has not been revised. Experts have raised a host of related geotechnical and safety concerns. Significantly, Enbridge has also recently informed the

Federal Energy Regulatory Commission that climate concerns may limit the expected service life of the proposed tunnel to twenty years. The MSCA must accordingly reevaluate the prudence of moving forward with this project in light of these significant developments.

Regards,



Zach Welcker  
Legal Director  
FLOW