



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

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## **FLOW Files Amicus Brief in AG Nessel Line 5 Lawsuit; Urges the Sixth Circuit Court of Appeals to Remand the Case Back to State Court**

Traverse City, Mich.—Today, September 25, 2023, FLOW (For Love of Water) filed a motion with the Sixth Circuit Court of Appeals in the 2019 state lawsuit *Attorney General Dana Nessel v. Enbridge*, requesting the federal appeals court to accept an [amicus brief](#) that articulates why this case should be remanded back to state court where it belongs.

Built in 1953, Line 5 is a 70-year-old oil pipeline operating in fierce currents on the bottomlands of the Straits of Mackinac, where Lake Michigan and Lake Huron meet. The underwater pipeline has been [repeatedly struck by ship's anchors](#), and cables dragged by passing vessels have [damaged the pipeline](#) and its supports. Line 5 is uniquely vulnerable to multiple impacts that could result in irreversible environmental harm and billions of dollars of damage to the Great Lakes regional economy.

Three years after the Attorney General filed the 2019 state lawsuit, Enbridge in a procedural tactic removed the case to the federal district court in Grand Rapids, Michigan. The federal district court refused to remand the case back to state court. The Sixth Circuit Court of Appeals accepted Attorney General Nessel's request to appeal the district court's ruling in July, and has directed the Attorney General and Enbridge to submit legal arguments on whether to remand the case back to state court in Michigan.

The waters and bottomlands are sovereign public trust resources held by the State of Michigan in trust for the benefit of the citizens of Michigan and the Great Lakes region. Long-standing legal principles that balance federal and state interests weigh in favor states' rights and jurisdiction over public navigable waters and bottomlands.

As an advocacy organization committed to protection of the precious state sovereign water resources, FLOW has requested permission to file a "friend of the court" brief, technically called an amicus brief, to provide the Sixth Circuit Court of Appeals our unique perspective regarding its knowledge and experience of Michigan and Great Lakes states' sovereign ownership of public lands and water resources under the public trust doctrine. State courts are the sworn guardians with a

responsibility to protect the public's rights in and uses of navigable waters and submerged lands throughout the Great Lakes region. Our shared waters are a public trust, and it is the duty of our state governments to act as stewards of this trust, ensuring that the interests of current and future generations are safeguarded.

But for the State of Michigan's conditional authorization under public trust law, Line 5 could not have been built on the bottomlands of Lake Michigan in the Straits of Mackinac. When the state granted an easement to Enbridge's predecessor 70 years ago, it was subject to the perpetual duty and right of the state to assure the public trust in the Great Lakes is never impaired. The easement was never properly authorized, and in any event, is subject to revocation and termination when the public trust waters and natural resources are threatened with risks of devastating harm. In the absence of that authorization and in the face of this extraordinary risk, Line 5 can not continue to operate.

The Great Lakes Business Network (GLBN) alongside 60 Tribes and First Nations have filed two additional amici briefs supporting the Attorney General's request to remand the Line 5 public trust case back to state court.

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FLOW is an independent, 501(c)(3) nonprofit that serves as a Great Lakes water law and policy center dedicated to ensuring the waters of the Great Lakes Basin are healthy, public, and protected for all. The enduring idea of the commons and legal principles of the public trust offer unifying adaptive solutions to address basin-wide threats. FLOW's staff of legal and policy experts, journalists, and community-builders makes FLOW an authoritative resource for Great Lakes advocates. FLOW builds a knowledge base for communities, state agencies, and legislators to inform policy and advocacy for water issues. Learn more at [www.ForLoveOfWater.org](http://www.ForLoveOfWater.org).

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