Secretary of State Tony Blinken

Secretary of Transportation Pete Buttigieg

Secretary of the Interior Deb Haaland

Attorney General Merrick Garland

Special Presidential Envoy for Climate John Kerry

White House National Climate Advisor Gina McCarthy

Council on Environmental Quality Chair Brenda Mallory

Dear Attorney General Garland; Secretaries Blinken, Buttigieg, and Haaland; Envoy Kerry; Advisor McCarthy; and Chair Mallory:

We write to urge you to support the efforts of Michigan Governor Gretchen Whitmer and Attorney General Dana Nessel to prevent a catastrophic oil spill in the Great Lakes’ Straits of Mackinac, which connect Lake Michigan and Lake Huron. We greatly appreciate President Biden’s long history of supporting the Great Lakes and his critical role in establishing the Great Lakes Restoration Initiative—and now we must protect this inspired legacy by preventing a decrepit 68-year old pipeline submerged on the lakebed 295 feet below the surface from devastating Lake Michigan and Lake Huron when it fails and inevitably ruptures.

Last year, Governor Whitmer and Attorney General Nessel issued directives to shut down Enbridge Energy’s Line 5 by May 12, 2021. These directives implicate vital regional and national interests: the protection the Great Lakes and Michigan residents from a catastrophic oil spill and the commitment to Tribal sovereignty through the support of Tribal treaty rights. Since then, Enbridge Energy has even tried to pressure the Canadian government to intervene as Michigan revoked Enbridge’s easement.

Governor Whitmer and Attorney General Nessel need the support of the Biden Administration to prevent unthinkable environmental harm from a spill that would decimate the world’s most important freshwater supply and contaminate up to 700 miles of Great Lakes coastline. The rupture of Line 5 in the Great Lakes would be the worst oil spill in U.S. history, dwarfing even the catastrophic Deepwater Horizon spill in the Gulf in 2010.

We are asking you to stand with Governor Whitmer, Attorney General Nessel, and the people of Michigan by supporting their revocation and termination of Enbridge’s easement and to utilize the authority in the Justice Department, the State Department and the Department of Transportation to back up this declaration.

**Background**

Line 5 was constructed in 1953 and currently carries up to 23 million gallons per day of oil and gas. It is operated by Enbridge Energy, the same company responsible for the 2010 Kalamazoo River oil spill, the worst inland oil spill in U.S. history. Line 5 lies on the lakebed of the Straits of Mackinac, the busy four-mile wide connection between Lakes Huron and Michigan. In the past three years alone, it has been struck and dented by anchors and scraped and pulled by dragging cables; its corrosion coating has crumbled and fallen off in multiple places; and 16 of the massive structures that support and anchor it in place have been damaged and had to be replaced. When Line 5 ruptures, the spilled oil is projected to contaminate up to 720 miles of Great Lakes shoreline in the U.S. and Canada, according to a University of Michigan study.

Michigan Governor Gretchen Whitmer and Attorney General Dana Nessel took action to protect Michiganders and all the Great Lakes from a catastrophic Line 5 rupture and the Tribes in the region have supported those actions. The bottomlands on which Line 5 lies are owned by the state, held in trust for the people of Michigan. Enbridge’s predecessor company was authorized to place Line 5 in that location by an Easement issued by Michigan in 1953 that has a number of conditions that the company must meet. A year ago, Governor Whitmer ordered the Michigan Department of Natural Resources (DNR) to review the Easement. After an extensive review, the Michigan DNR concluded that the Easement violated Michigan’s public trust obligations and also that Enbridge was in continued violation of many of the Easement’s provisions. As a result, Governor Whitmer issued an order on November 13, 2020 revoking and terminating the Easement. The Governor gave the company until May 12, 2021 to shut down Line 5 and filed suit in Michigan state court to compel compliance. Enbridge has contested the Governor’s order and asked federal courts to take jurisdiction over the case, despite the case being entirely based on state property law (Michigan’s ownership of the bottomlands of the Straits) and state contract law (Enbridge’s violations of the Easement, a contract with the state). As of May 12th, Enbridge is now in violation of the Governor’s Order.

In response to Governor Whitmer’s order to shut down Line 5 by May 12, there also has been growing pressure from Canadian government entities. Many of the Canadian provinces have written to Governor Whitmer in opposition to her order; the provincial premiers in Alberta and Ontario have inaccurately condemned Governor Whitmer’s order as a threat to Canadian jobs and economic stability; local officials in Sarnia inaccurately claimed that thousands of jobs in that area would be lost; and the Canadian government has filed an amicus brief in the federal case. And, it has been reported in multiple media outlets that Prime Minister Trudeau has personally pressed President Biden in private meetings.

It is important that President Biden and his administration support Governor Whitmer. The Great Lakes are essential for Michigan, the upper Midwest and the nation. They constitute some 20 percent of the planet’s fresh surface water and some 90 percent of North America’s surface fresh water. They provide drinking water for over 30 million U.S. residents, recreation, and jobs for millions of Michiganders. Their importance to the nation is so great that Presidents and members of Congress from both parties have joined to create and annually fund the Great Lakes Restoration Initiative, a rare display of bipartisan unity over the last decade. But a rupture of Line 5 would send millions of gallons of oil throughout the Great Lakes, jeopardizing the health and wellbeing of millions of U.S. residents and the economy of Michigan and other states. And there is no question of *if* a rupture will happen—it is only a question of *when*. Governor Whitmer’s shutdown order is the best method of preventing the rupture before it occurs.

The State of Michigan is not the only sovereign pressing for the shutdown of Line 5. Tribal governments and tribal leaders have joined together to demand that Line 5 be decommissioned. Four tribes have filed an amicus brief before the federal court in an effort to return the Governor’s case to state court. As Bay Mills Indian Community Chair Whitney Gravelle wrote,

It is extremely important for Bay Mills Indian Community to take up

this battle against Enbridge. Since time immemorial, the Great Lakes

have been an integral part of Bay Mills’ way of life, and they will

continue to be an integral part of tribal culture, tradition, and

economy for many generations to come. By failing to consider the

dangers Line 5 poses to treaty-fishing rights, cultures, and traditions of

the Anishinaabe, we risk killing the heart of Turtle Island — the heart

of North America.

President Biden has made multiple commitments to respect tribal treaty rights and indigenous culture. Supporting the tribes’ demands on Line 5 would honor those commitments.

**Request for Action**

Enbridge’s strategy to keep this dangerous line operating is to convince federal institutions —the federal courts or the U.S. State Department — to strip Governor Whitmer of her lawful authority to protect the people of Michigan. We ask you to ensure that the Governor is able to carry out her constitutional duties. We ask the Biden Administration to take the following measures to support Governor Whitmer’s shutdown order:

* Issue a statement of interest from the Pipeline Hazardous Materials Safety Administration (PHMSA) supporting the Governor’s authority under state law to order the shutdown of Line 5. The Pipeline Safety Act and regulations in no way preempt Michigan’s authority to issue its shutdown order.
* Issue a statement of interest from the State Department that the Governor’s actions to protect the Great Lakes are consistent with applicable treaties and agreements, including 1977 U.S.-Canadian Agreement on the transit of hydrocarbons, which by its terms does not strip a State of its core sovereign rights to protect its submerged lands and navigable waters, and further explicitly allows U.S. authorities like Michigan to regulate pipelines based on environmental protection. Such a statement would also be consistent with the 1909 Boundary Waters Treaty and the 1972 Great Lakes Water Quality Agreement and would respect tribal sovereignty.
* Meet with representatives of the undersigned organizations to discuss additional measures that the Biden Administration can take to support Governor Whitmer’s and Attorney General Nessel’s actions to protect the Great Lakes.

Thank you for considering our request. We look forward to your response. Please contact Mike Shriberg at 734-904-7015.

Sincerely,

National Wildlife Federation

League of Conservation Voters

Sierra Club

Earthjustice