



# BAY MILLS INDIAN COMMUNITY

# PIPELINE NEWSLETTER

SUMMER 2020

SPECIAL EDITION ISSUE 11



Painted turtle oiled during Kalamazoo oil spill (photo courtesy of EGLE)

## SHUT DOWN. DECOMMISSION. REMOVE THE BLACK SNAKE. SHUT DOWN LINE 5.

Bay Mills has a long-standing and critical interest in the waters of the Great Lakes, the Straits of Mackinac, and the surrounding region. As one of the signatories to the 1836 Treaty of Washington, which ceded territory to the United States for the creation of the State of Michigan, Bay Mills reserved the right to fish, hunt, and gather throughout the territory— including in the Great Lakes and the Straits of Mackinac. Furthermore, as described in detail below, the area has deep cultural, religious, and economic significance to the Tribe. As a result, Bay Mills is very concerned about the implications of Line 5’s continued operation and subsequent permit applications.

Bay Mills has consistently voiced its concerns about the continued operation of Line 5 through the Straits of Mackinac and across other ceded territory in Michigan where it holds treaty protected rights.

“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.” –Whitney Gravelle, BMIC in-house counsel

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For more information on Bay Mills’ struggles, refer to <http://www.baymills.org/enbridge-portal.php> or scan the QR code



SCAN ME



Artwork credit: Great Lakes Indian Fish and Wildlife Commission



# Cultural Significance of the Straits of Mackinac:

## *Michinnimakinong*

### The Heart of Turtle Island

What may be less than apparent to EGLE and the general public is that, in addition to the water and environmental impacts, the Project poses a severe threat to the Bay Mills' treaty, cultural, and spiritual resources. The Straits of Mackinac, and the Great Lakes more broadly, are central to Bay Mills' cultural, traditional, and spiritual identity.

According to Anishinaabe oral history, a great flood covered all of Earth. The animals that survived the flood were instructed by the Creator to swim deep beneath the water and collect soil to be used to recreate the world. All of the animals failed, until the lifeless body of the muskrat, the last animal that tried, resurfaced carrying a small handful of wet soil in its paws. The Creator took that soil and rubbed it on the Great Turtle's back, forming the land that became known as Turtle Island. Thus, began the creation of North America.

The Great Turtle emerged from the flood in the Straits of Mackinac, and the Great Lakes are considered the heart of Turtle Island and North America. The word "Mackinac" is, in fact, derived from the original name of the Great Turtle in the Anishinaabe creation story. The Straits are more than a waterway; they are a place of ongoing and present day spiritual significance. Since time immemorial, the Great Lakes have been an integral part of the Bay Mills' way of life, and they will continue to be an integral part of our culture and traditions for many generations to come.

Also within the Straits of Mackinac, are numerous spawning grounds for different fish species - including Lake Whitefish - which our people hold in sacred regard. According to Tribes' oral histories, during a time of famine and desolation, the eight traditional clans Bear, Turtle, Deer, Loon, Crane, Marten, Bird, and Whitefish came together to discuss how to save the Anishinaabe throughout the Great Lakes Region. After much debate and discussion, the Whitefish clan chose to sacrifice itself to provide for the wellbeing of the people. The Whitefish clan submerged itself in the Great Lakes and became the Lake Whitefish that the Tribes fish and eat today, as a sole source and means to provide for the prosperity of the Anishinaabe.

These Anishinaabe teachings remind our people of the sacrifices of our brethren and the resulting solemn duty we have to protect and preserve these resources and these sacred places. Although it is essential to identify any cultural and historical sites in the area, the threats from the pipeline go beyond burial sites and cultural resources along the Project's path. The Straits of Mackinac is a cultural and treaty-protected landscape that is not valued on the basis of individual sites alone, but on the interconnectedness of the land, water, and people. If we fail to consider the significance of the Straits, the Great Lakes and the dangers the Project poses to the treaty resources, culture and traditions of Bay Mills and other tribal nations, we risk destroying a way of life for our people, and we risk destroying the heart of Turtle Island.

# DECADES OF DAMAGE: A NETWORK OF PROBLEMS

As clearly evidenced below, Line 5 and Enbridge have a long history of pipeline ruptures, system and operator failures, poor inspection practices and inadequate staff training resulting in environmental contamination, ecological and wildlife impairment, inadequate demonstration of insurance coverage for environmental remediation, and ecological restoration from pipeline releases, and the loss of human life. For these and other reasons, we strongly urge regulatory agencies deny all permits and decommission the pipeline.

National Wildlife Federation (NWF) has been looking into the pipeline’s murky history. NWF estimates that Line 5 pipeline has spilled at least 1.13 million gallons of oil in more than 30 incidents since 1968 along its length from Superior, WI to Sarnia, Ontario. Data from the US Pipeline and Hazardous Material Safety Administration (U.S. PHMSA) shows that the US portion of the pipeline network owned by Enbridge and its joint ventures and subsidiaries suffered 307 hazardous liquids incidents from 2002 to August 2018 - around one spill every twenty days on average. There is no comparable national data set in Canada or a consistent format for data collection or release. Importantly, Enbridge is responsible for the largest terrestrial spill of crude oil in U.S. history.

## A Lucky Find: Pinhole Leak

In 1990, a helicopter patrol spotted a patch of oil on the ground about a mile south of Millecoquins Lake near Engadine. The oil was from Enbridge Line 5, which had spilled 630 gallons through a pinhole leak.

## Crystal Falls Inferno

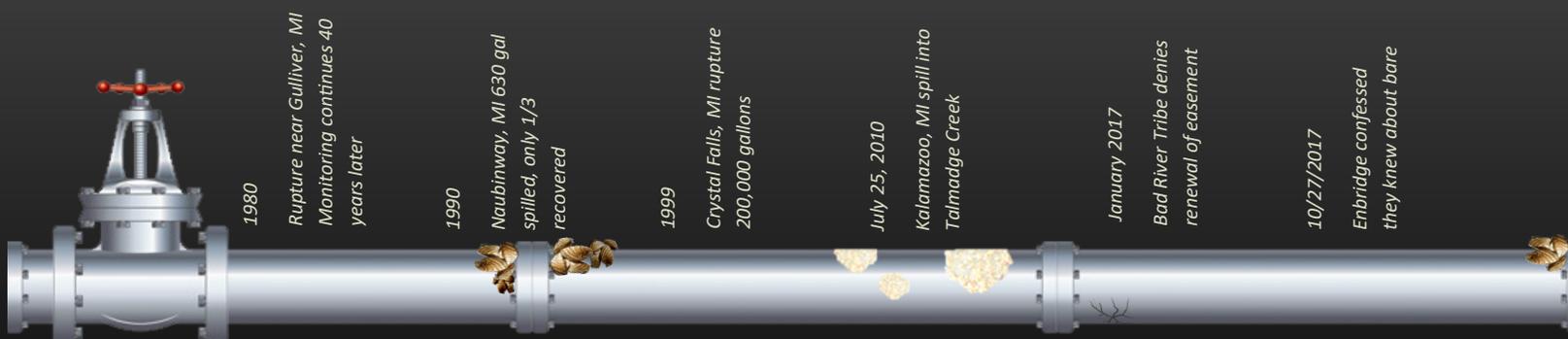
The spill near Crystal Falls in 1999, released 222,600 gallons of oil and natural gas liquid. The damage was caused by poor installation decades prior— the line lying on a rock, which forced the evacuation of about 500 people after responders ignited a vapor cloud that sparked a 36-hour long fire.

## Kalamazoo Spill: Line 6B

On July 25, 2010 Enbridge's Line 6B ruptured 0.6 miles downstream of the City of Marshall, Michigan along Talmadge Creek in Kalamazoo County, a tributary to the Kalamazoo River. This pipeline rupture released more than 1 million gallons of tar sands bitumen to the environment, and was exacerbated by Enbridge’s failure to halt the release for 18 hours after its occurred. Environmental cleanup of the Kalamazoo River spill reportedly has cost upwards of \$1.2 billion.



Pipeline seam rupture Kalamazoo oil spill (photo courtesy of EGLE)



**30** Incidents since 1968

**1.13** Million gallons released since 1968

## A Lesson in Pack Ice



Ice conditions near the spill site in the Straits on April 2, 2018.

In early April 2018, an anchor strike ruptured an electrical cable releasing mineral oil into the Straits and denting the oil pipelines. The multi-agency response and cleanup was an important lesson in pack ice and troublesome spring weather. There were many delays in the response to this oil spill. It took many days to determine the toxicity of the oil spilled. Critical equipment wasn't on site for weeks after the original spill date. If this spill had been Line 5 that leaked, given the weather conditions, very little could have been done to respond to the spill in the Straits.

## 2020 Anchor Support Damaged

During a 5/20/20 routine inspection, a portion of the Straits east segment was found to be scraped and then, on 6/18/20, the company found a nearby anchor support on the east segment was also damaged. The damage is believed to have been caused by a small vessel dragging some sort of cable.

The at-fault vessel could be narrowed down to five, four of which are contracted by Enbridge. The vessel's "cable became entangled around and pulled the pipeline support," according to the company's report.



Damage dislodged the anchor support EP-17-1 from its base on east leg of pipeline in the Straits of Mackinac (photo courtesy of Enbridge Energy)

Later in June, the Michigan Attorney General sought and state courts granted an order requiring Enbridge to temporarily cease operating the Straits pipeline segment. PHMSA insisted the east leg of the pipeline remain shut down until additional inspections were completed <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-07/PHMSA%20Letter%20to%20Enbridge%20re%20Line%205%20-%206-29-2020.pdf>.

11/27/2017

Gov Snyder signed 1st Agreement with Enbridge without tribal consult

4/1/2018

Line 5 dented by anchor strike

Earth Day 2020

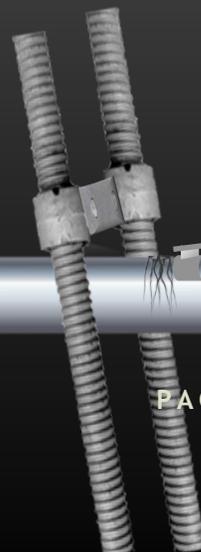
Enbridge files for tunnel permit during pandemic

July 2019

Bad River Tribe files lawsuit against Enbridge

Summer 2020

Straits pipeline screw anchor damaged, possibly by mntnc crew



# What's at stake?

## ◆ Spawning and nursery habitat

Reefs and wetlands used by lake whitefish, lake trout, yellow perch, walleye, and other fish and amphibian species throughout Michigan.

## ◆ Wetland and shoreline plants

Many edible, medicinal, and rare plants, including cranberries, grow along the hazard zone.

## ◆ Migratory bird habitat

Thousands of birds stop-over while migrating. Winter resident waterfowl band together in massive rafts in patches of open water.

## ◆ Aquatic animal habitat

Reptiles and amphibians are particularly vulnerable. A coating of oil on skin or scales in amphibians and reptiles can lead to reduced thermoregulatory capacity and suffocation in amphibians. Amphibians may absorb toxins from oil through their skin. Reptiles, such as long-lived turtles, may be more susceptible to carcinogenic effects. Aquatic insects populations, prey for so many other animals, may high mortality and struggle to recover in contaminated sediments. A 2019 survey confirmed presence of mussels in half the streams.

## ◆ Hunting and fishing lands

4,335 miles of rivers, 491 lakes, and 227,520 upland acres of Ceded Territory are in the hazard zone.

## ◆ Groundwater

Research at the USGS Bemidji research lab has shown that when spilled oil enters the groundwater system, biological activity is minimal, and the oil is expected to remain in the aquifer for decades.

## ◆ A legacy of pollution

What world will you offer the next seven generations?

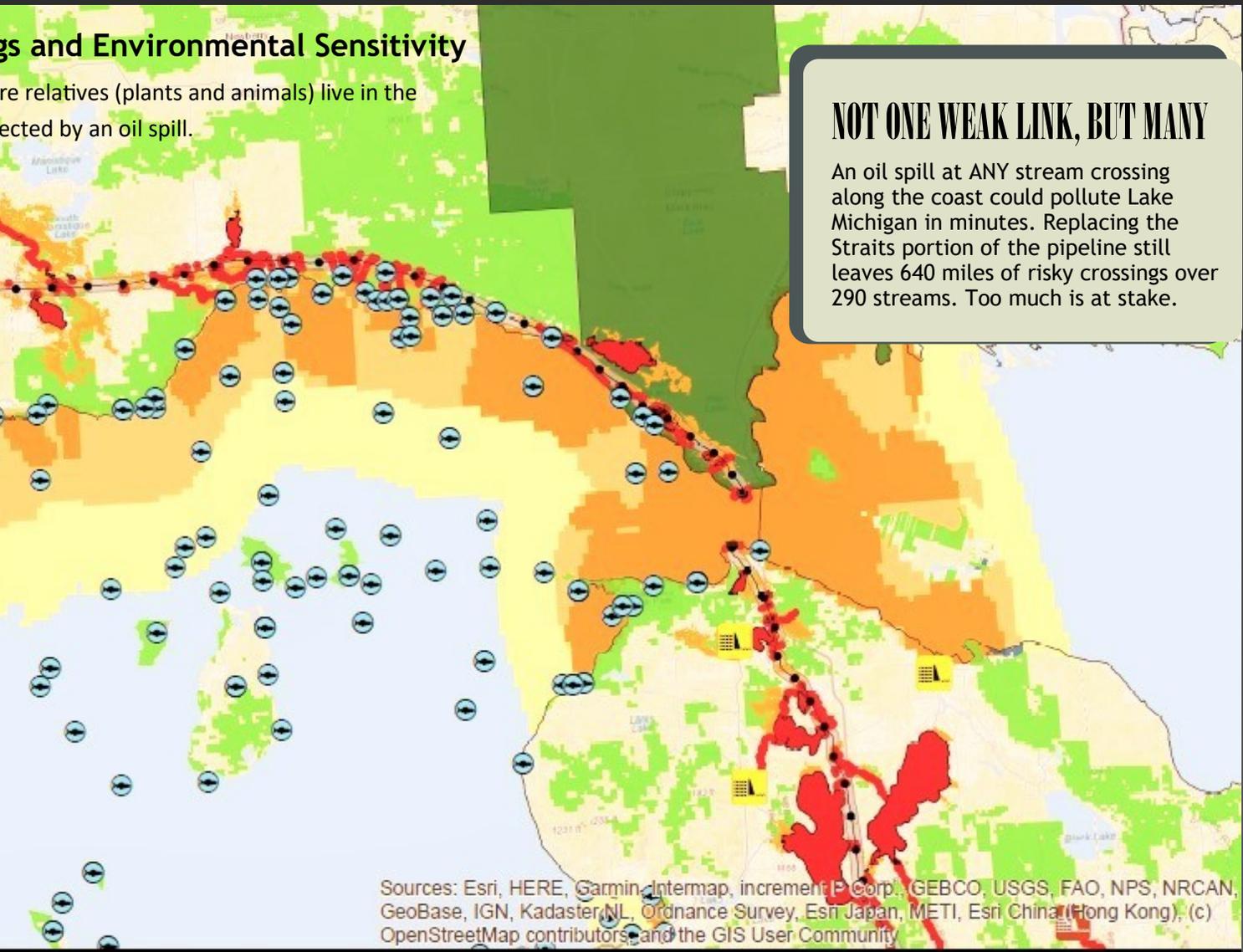


## Risks and Environmental Sensitivity

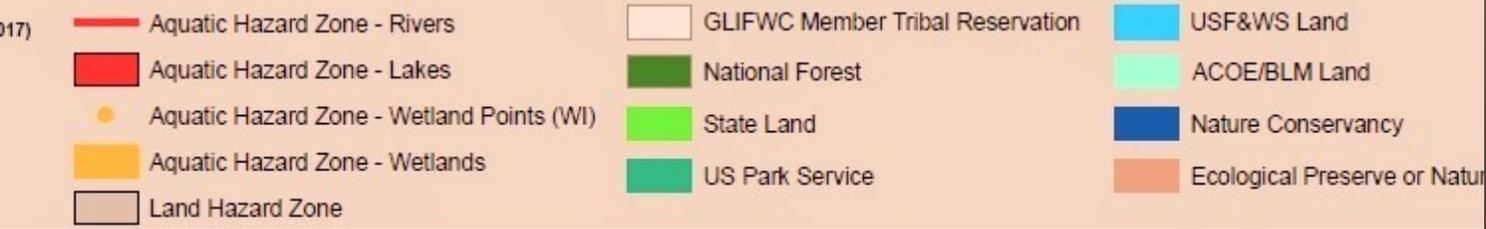
More relatives (plants and animals) live in the area affected by an oil spill.

### NOT ONE WEAK LINK, BUT MANY

An oil spill at ANY stream crossing along the coast could pollute Lake Michigan in minutes. Replacing the Straits portion of the pipeline still leaves 640 miles of risky crossings over 290 streams. Too much is at stake.



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



**400** Spawning reefs vulnerable to a spill

**12** Fish species spawning in areas vulnerable to a spill

**THE POWER OF WATER: Erosion around the pipeline**



Line 5 exposure within Denomie Creek subwatershed (near Bad River). The photo was taken after vegetation had been cleared from the area and sandbags were temporarily installed under the free-spanning pipeline (MNRD, 2019).



The Bad River Meander is shown completely inundated with water during a spring flood event. The Line 5 corridor is visible running through the middle of the meander. (MNRD 2019).

# Bad River Band vs. Enbridge Line 5 Pipeline

## The Wisconsin Reroute

The Enbridge Line 5 pipeline, run by Enbridge Incorporated, a multinational transportation company, based in Calgary, Canada, has and still is affecting many Native American Tribes of the North. Among those, is the Bad River Band of the Lake Superior Tribe of Chippewa in Western Lake Superior Region of northern Wisconsin. Twelve miles of the Line 5 pipeline currently travel through the watershed of the Bad River Band and has already caused considerable damage to the tribe's natural environment. Although 15 of the land easements for the pipeline have expired, Enbridge continues to run the pipeline indefinitely, claiming that it can take land and Treaty resources for reconstruction of the line. Members of the Bad River Band fear that the pipeline will eventually destroy the land and resources on their reservation. This is troublesome to the Tribe, considering many resources from nature are not only necessary to their subsistence and cultural survival, but sacred to them, such as *manoomin*, which is wild rice in Ojibwe.

The Tribal Council of the Bad River Band has rejected Enbridge's claim that it can take land and water resources for the pipeline and currently has a lawsuit filed against the company. Their demands include to have the pipeline decommissioned from their reservation immediately, along with \$45 million for trespassing damages. Enbridge has offered the Tribe many forms of monetary aid in order permanently take land and Treaty resources to continue operating the pipeline on their land, but Tribal Council have and continue to decline these offers.

Illustrating the risk, an oil pipeline is located in the path of the Bad River's meandering course (and the land is changing at an alarming rate), causing the River to move closer to a portion of the pipeline that is buried shallower than the adjacent River making an oil spill from the pipeline inevitable. A spill not only has the potential to cause more extreme damage to the land, but to the members of the Bad River Band as well. Additionally, investigations of the Tribe's reservation show that the natural changes at the River near the pipeline are not isolated. They are an example of the broader reality that the natural changes in the land and water courses where the line is will only increase as time progresses. The Bad River Band is taking a stand against Enbridge Inc. and their Line 5 pipeline in order to save their environment, resources, culture, and community.

For more information on Mashkiiziibii's struggles, refer to <http://www.badriver.nsn.gov/natural-resources/threats/> or scan the QR code

Complaint in Case No. 3:19-cv-00602 Filed: 07/23/19



## State of the Legal Fight: the Tunnel

What does Enbridge need to proceed with the tunnel expansion, and how can we participate in preventing them from moving forward?

Enbridge is hoping to move forward with plans to replace the existing Line 5 pipelines with a new pipeline that will be housed in a tunnel under the lakebed of the Straits of Mackinac. If approved, this would allow Enbridge to operate the new pipeline for 99 years, and would keep the existing dual pipelines in operation until construction is completed, estimated to take at least until 2024.

There are a number of permits that Enbridge must receive from a variety of state and federal agencies prior to moving forward. Bay Mills is submitting comments and, in one instance, participating as an intervening party, in these proceedings to raise concerns and prevent the issuance of the permits. Bay Mills is being represented by Earthjustice and the Native American Rights Fund (NARF) in these proceedings.

The primary permits that concern the pipeline's crossing of the Straits are:

1. Act 16 Approval certifying the need & route for the pipeline (*before the Michigan Public Service Commission*)
  - In June, the Michigan Public Service Commission (MPSC) denied Enbridge's request to bypass the MPSC's approval process and instead ordered a yearlong administrative review to examine the need for the project and the environmental impacts it will have.
  - A trial-like proceeding will be held in the spring to evaluate Enbridge's permit application. Bay Mills plans to present evidence about how the new Line 5's construction and operation could affect treaty-protected resources and cultural resources.
2. Federal Permit pursuant to the Clean Water Act and the Rivers and Harbors Act (*before the Army Corps of Engineers*)
  - Bay Mills submitted comments on July 14th. The Army Corps is still reviewing the comments.
3. State Wetlands Permit, State Permit for Impacts to the Great Lakes Bottomlands, and Clean Water Act Permit (*before the Michigan Department of Environment, Great Lakes and Energy*)
  - Michigan's environmental agency (known as EGLE) is reviewing permit applications for (1) the impacts to wetlands that will result from constructing the tunnel and new pipeline; (2) the impacts to the bottomlands of the Great Lakes that will result from boring a tunnel through them; and (3) the discharges of treated wastewater and slurry into the Straits that will occur during construction.
  - Bay Mills will be submitting comments on the NPDES, wetlands, and GLSLA permit applications October 19, 2020.

For all permits, MEGLLE must ensure compliance with Michigan Environmental Protection Act.

## A Legacy of Harm to Tribal Communities

Enbridge's decades-long assault on our health, safety, and food supply is engrained in the company's history and is indicative of the fossil fuel industry's disregard for Tribal sovereignty.

Because of Enbridge's abysmal safety record and continued exploitation of our natural resources, our communities are forced to live in constant fear as our homes, sources of income, and ultimately our lives are threatened by Enbridge's continued operation of Line 5.

The oil company's shoddy pipelines have leaked millions of gallons of oil into the natural resources we rely on for food, medicine, and trade. Over half of our member households rely on fishing for all, or a portion of, their annual income. The right to fish, and the need for a natural environment in which fish can thrive, is of paramount importance to preserving our way of life.

Tribal citizen and subsistence fisherman Jacques LeBlanc Jr. stressed how the tunnel expansion would ravage both subsistence and commercial fishing, underscoring the vital role the Great Lakes play in maintaining healthy populations of the different species of fish that are available for harvest. "If a tunnel is built or the pipelines burst, the numerous spawning areas for fish in the Straits of Mackinac will be destroyed and poisoned to such an extent that no person will be able to fish, let alone eat anything that comes from those waters."

We know that the damage Enbridge has inflicted on tribal nations is not exclusive to Bay Mills or the Line 5 pipeline. In Wisconsin, the Bad River Band of Lake Superior Chippewa sued Enbridge last summer in order to shut down and remove Line 5 or re-route it away from the reservation, and the legal battle will continue into next year. In northwestern Minnesota, the White Earth Band Reservation has been fighting Enbridge for years over the company's construction of a Line 3 replacement pipeline and its refusal to remove the original Line 3 pipeline from the ground, increasing the risk of soil and water contamination that endangers the Tribe's ancient rice beds. Many of us painfully remember Enbridge's Line 6B pipeline, which ruptured in 2010 and resulted in the United States' worst inland oil spill in history, polluting almost 40 miles of the Kalamazoo River. The Nottawaseppi Huron Band of the Potawatomi were among the worst impacted by the contamination of the river, which they relied on for necessities including medicine, fish, ducks, and turtles.

Earthjustice and the Native American Rights Fund (NARF) are representing Bay Mills in our legal fight to decommission Line 5. Both organizations have been unwavering roadblocks in preventing harmful pipeline development; Earthjustice successfully defeated the proposed Constitution Pipeline that would have run through Pennsylvania and New York earlier this year, and is representing the Standing Rock Sioux in their fight against the embattled Dakota Access Pipeline. NARF has been advocating for the Rosebud Sioux Tribe of South Dakota and the Assiniboine and Gros Ventre tribes of the Fort Belknap reservation in Montana against the proposed Keystone XL pipeline, of which construction remains halted until 2021.

It is imperative that we remain aware of the legal protections entitled to our community. Under the 1836 Treaty of Washington, Bay Mills retains usufructuary property rights to natural resources in the ceded territory, including in and around the Straits of Mackinac. The State of Michigan is obligated to honor these treaty-protected rights, and prohibited from diminishing them.



*Photo by Lucas Zhao - CC BY-NC 2.0*

Flags flying at the Oceti Sakowin Camp in 2016, near Cannonball, ND. Dakota Access Pipeline opposition.



## What do Treaty Rights mean?

*Mii'iw anishnaabe-izhitwaawin. Giishpin ani-bima'adooyaang miinawaa, giiga-mashkawizimin miinawaa.  
This is our way of life. If we follow this path again, we will be strong again.*

On March 28, 1836 the native people of this area signed a treaty with the United States . Treaties are, under the United States Constitution, the supreme law of the land. “Although our ancestors were willing to provide land to the United States, they carefully protected the traditional lifeway and its reliance on the environment’s natural resources for food, shelter, medicines, and for trade. This was embodied in Article Thirteenth of the Treaty, which reserved the right to hunt, and the other usual privileges of occupancy until the land was required for settlement.”— Bryan Newland

The treaty was handed down through seven generations. The words of that treaty are true today as they are any other time. But for generations, these commitments were not upheld. Fishermen getting ticketed, harassed, and many weren't fishing at all because of that harassment. So in 1971, a Bay Mills fisherman named Big Abe LeBlanc went and set fishing nets in Ceded Territory waters. He notified the Michigan DNR who ticketed him and courts found him guilty. The community decided they were going to fight to have their treaty right acknowledged and appealed the case. Ultimately their rights to hunt fish and gather were upheld in the Fox Decision.

“Over half our member households rely on fishing for all, or a portion of their annual income. The right to fish, and the need for a natural environment in which fish can thrive, is of the utmost importance to the Tribe and its members, and will be fiercely protected.” —Bryan Newland

“We have that black snake going across over here. That black snake that endangers treaty rights. It endangers our fishery, the livelihood of our people. We fished these waters for untold centuries. We’re a part of the water; we’re a part of the earth and we ask that we continue to be a part of those in the future. And that we continue to uphold the vision of those ancestors. It took vision for them to reserve these rights.” — Bucko Teeple

The decisions we make today should result in a sustainable world seven generations into the future. It reminds us to understand that the decisions we make are not limited by the immediate concerns of today, but instead have implications long after we are gone.

For more information on Bay Mills’ fishing rights, refer to this educational video, courtesy of GLIFWC  
<https://youtu.be/VBlzPnETBkQ> or scan the QR code



SCAN ME

**SHUT DOWN. DECOMMISSION. REMOVE  
THE BLACK SNAKE. SHUT DOWN LINE 5.**



Artwork credit: Beth LaPensee 2020

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SCAN ME



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