



RESOLUTION NO. 21-05-10A

Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded Territory, waters of the Great Lakes, and the Straits of Mackinac

WHEREAS: The Gnoozhekaaning, *Place of the Pike*, or Bay Mills Indian Community is a federally recognized Indian Tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5101, *et seq.*; and

WHEREAS: The Bay Mills Indian Community is the recognized successor to the Sault Ste. Marie area bands which signed the Treaty of March 28, 1836 (7 Stat. 491), which reserved for all time the right to fish, hunt, and gather in the ceded land and waters of the State of Michigan – including the ceded waters of Lake Superior, Huron, and Michigan including the Straits of Mackinac; and

WHEREAS: The Bay Mills Indian Community acknowledges although our ancestors were willing to provide land and water to the United States for the creation of the State of Michigan, they carefully preserved and protected our traditional lifeways and our reliance on the environment's natural resources, which is embodied in Article Thirteenth of the 1836 Treaty of Washington; and

WHEREAS: The United States Constitution (Article VI.C2.1.1.1) makes clear that all treaties made with Tribal Nations shall be the supreme law of the land; and

WHEREAS: The right to fish, hunt, and gather throughout the ceded territory under the 1836 Treaty of Washington is dependent upon the ability of the Great Lakes and inland ecosystems to support viable and stable treaty resources; and

WHEREAS: Commercial and subsistence fishing is the primary occupation of the Bay Mills Indian Community tribal citizens from treaty times until present day, and over half of our citizen households rely on fishing for all or a portion of their annual income; and

WHEREAS: These treaty rights have been fiercely protected by Bay Mills Indian Community and its citizens, including litigation regarding the continued existence of the treaty right, the citizen's right to use traditional fishing gear such as gillnets, and the limitations on the State of Michigan's power to regulate the exercise of the treaty right, (see *People v. Leblanc*, 399 Mich 31; 248 NW2d 199 (1976); *United States v. Michigan* 471 F. Supp. 192 W.D. Mich. (1979)); and

WHEREAS: The Straits of Mackinac area is one of the most strategically located areas in the Great Lakes region and has been the center for cultural contact and interaction for thousands of years, which is sensitive for the presence of terrestrial and bottomland archaeological sites, submerged paleo landscapes, cemeteries and isolated human burials, significant architecture and objects, and historic districts; and

WHEREAS: Bay Mills Indian Community acknowledges the Straits of Mackinac as a Traditional Cultural Landscape and Property that is eligible for inclusion in the National Register of Historic Places based on its associations with the cultural practices, traditions, histories, beliefs, lifeways, arts, and social institutions of our living community; and

WHEREAS: Banishment is a traditional, historical, and customary form of tribal law that has existed since time immemorial and is only exercised by Bay Mills Indian Community when egregious acts and misconduct have harmed our tribal citizens, treaty rights, territories, and resources; and

WHEREAS: Since 1953 Enbridge Energy, Inc. and its predecessor companies have operated a 645 mile, 30-inch diameter pipeline, named Line 5, that runs through the State of Michigan and Bay Mills Indian Community's treaty ceded territory, which transports a variety of petroleum products; and

WHEREAS: The Line 5 dual pipelines were designed to function for a 50-year period, which has already expired, and is already subject to small ruptures amounting in more than 1,100,000 gallons of oil and natural gas products that have spilled along the upland portion of the Line, directly impacting resources which the Bay Mills Indian Community has a treaty-protect right to enjoy; and

WHEREAS: The Environmental Protection Agency has fined Enbridge Energy, Inc. \$6.5 million dollars for failure to maintain and for failure to repair of thousands of dents, cracks, and metal loss along the Lakehead Pipeline System including the Line 5 dual pipelines; and


WHEREAS: Enbridge Energy, Inc. has demonstrated through various actions it does not honor the rights and interest of Tribal Nations by: altering underwater archeological reports (see Letter from Professor John M. O'Shea, Curator of Great Lakes Archaeology, to Ms. MacFarlane-Faes, Deputy State Historic Preservation Officer (February 12, 2020)); utilizing traditional cultural practices against Tribal Nations; and attempting to initiate non-expert cultural survey work of the Straits of Mackinac without informing or engaging permitting authorities; and

WHEREAS: Continued operation of Line 5 dual pipelines will ultimately result in a rupture of the pipeline, causing catastrophic damage to the lands and waters near the Straits of Mackinac, destruction of our Tribal Nation's treaty rights, and harm the people who depend on the Great Lakes for their economic livelihood, their quality of life, their cultural wellbeing, and their very existence.

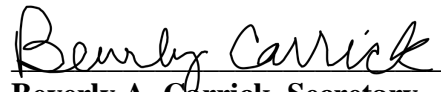
NOW, THEREFORE IT BE RESOLVED, that the Executive Council of the Bay Mills Indian Community hereby banishes Enbridge Energy, Inc.'s Line 5 dual pipelines from the Bay Mills Indian Community reservation and the lands and waters of our ceded territory – including the Straits of Mackinac.

AND BE IT FURTHER RESOLVED, the Executive Council hereby requests that any regulatory body with oversight authority, including the Chippewa Ottawa Resource Authority, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, Sault Ste. Marie Tribe of Chippewa Indians, the State of Michigan, and the United States mandate and enforce the banishment of Enbridge Energy, Inc.'s Line 5 dual pipelines from the 1836 Treaty of Washington ceded territory.

APPROVED:

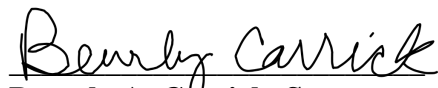

Whitney B. Gravelle, President
Executive Council
Bay Mills Indian Community

ATTEST:


Beverly A. Carrick, Secretary
Executive Council
Bay Mills Indian Community

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community Executive Council, do hereby certify that the above Resolution was adopted and approved at a Special Meeting of the Bay Mills Executive Council held at Bay Mills, Michigan on the 10 day of May 2021, with a vote of 4 for, 0 against, 0 absent and 1 abstaining. As per provisions of the Bay Mills Constitution, the Tribal President must abstain except in the event of a tie.


Beverly A. Carrick, Secretary
Bay Mills Executive Council