Nessel takes Enbridge tunnel challenge to appellate court

Attorney General Dana Nessel has filed her court appeal challenging the recent ruling which would allow pipeline company Enbridge to build a tunnel in the Straits of Mackinac.

Last week, a Michigan Court of Claims judge ruled in Enbridge’s favor on the July lawsuit, which questioned Enbridge’s legal right to build a tunnel beneath the Straits to house portions of its Line 5 petroleum pipeline. In large part, the lawsuit revolved around the method by which lawmakers approved a series of executive and legislative actions, giving Enbridge permission to move forward with the tunnel plan.

Nessel also argued that the continual operation of Line 5 violates the public trust and presents an inherent risk, constituting a public nuisance and violation of the Michigan Environmental Protection Act. But Judge Michael J. Kelly ruled that state’s tunnel agreement with Enbridge was, indeed, constitutional.

“We always expected this matter would be resolved in the appellate courts,” Nessel said in a statement Tuesday. “While I disagree with Judge Kelly’s decision, I appreciate how promptly he addressed this case and issued his opinion. This is just the first step in the court process, and I am more resolved than ever to continue this fight on behalf of the people of Michigan.”

Her office filed with the Michigan Court of Appeals on Tuesday. Nessel’s office has also commissioned and released a 120-page report on an independent audit into...
Enbridge's finances and insurance claims.

"In fact, we recently learned that Enbridge Energy Partners L.P. seriously misrepresented its financial holdings when it made its deal with the Snyder Administration," Nessel said in a press release. "In the event of a catastrophic oil spill, the people of the state of Michigan could be left holding the bag for more than a billion dollars in unfunded liability."

Jennifer McKay, of Tip of the Mitt Watershed Council in Petoskey, commended the appeal, but also called on the executive branch of the state to respond to Nessel's audit.

"The Watershed Council commends the Attorney General for her prompt appeal of the recent decision," she said in an email to the News-Review. "While the AG continues to pursue matters in the court of law, we call on the Governor to take strong action on the recent report that confirms Michigan's citizens are ultimately responsible for the costs of an oil spill from Line 5 in the Straits of Mackinac. With the dire consequences of an oil spill in the Straits, the State should not be dependent upon a company that has a merely voluntary financial obligation.

"Furthermore, since the Enbridge subsidiaries that signed the Agreements do not have the capacity to cover the required liability of $1.878 billion, Enbridge has been and is clearly in violation of the agreement. Subsequently, it should be declared void."