In the flurry of the Michigan legislative lame duck session, a slew of bills and agreements were passed and signed at breakneck speed that provided authorization for Enbridge Energy to pursue construction of a utility tunnel in the Straits of Mackinac to house a replacement Line 5 pipeline. The tunnel is proposed to be approximately 100 feet below the bottom of the lakebed and 10 feet in diameter. It will be designed to house a 30-inch diameter replacement Line 5, along with other utilities, such as electric and fiber optics. The project is projected to take 7-10 years to complete.

Senate Bill 1197, introduced by former Senator Casperson and championed by Representative Chatfield, was fast-tracked through the Legislature. The original plan was to force the ownership and responsibility for a Mackinac Straits tunnel project on the Mackinac Bridge Authority through a public/private partnership. There was some delay due to strong opposition, which resulted in elected officials vetting the Mackinac Bridge Authority plan and voting to create a new straits corridor authority to oversee the tunnel. Senate Bill 1197, now known as Public Act 359 of 2018, created a new Mackinac Straits Corridor Authority (MSCA) - a board that will oversee construction and operation of a tunnel proposed to go under the Straits of Mackinac to house Enbridge Energy’s Line 5.

Within hours of signing the legislation, former Governor Snyder appointed three members to the board. Just one week later, at the inaugural meeting of the Mackinac Straits Corridor Authority, the board approved agreements that will allow Enbridge Energy to pursue construction of the utility tunnel. The State of Michigan finalized the deal by signing more agreements with Enbridge Energy. All of the agreements are available on www.mipetroleumpipelines.com.

**The agreements lay out the following:**

- Enbridge is to design, construct, operate and maintain the tunnel – at its own expense.
- MSCA is to accept ownership of the tunnel after it is constructed and issue a 99-year lease to Enbridge for a “Straits Line 5 Replacement Segment” within the tunnel.
- Enbridge is not permitted to transport heavy crude oil through the replacement segment within the tunnel.
- Until the dual pipelines in the Straits are decommissioned, Enbridge will provide a minimum financial assurance of $1,878,000,000 that will be annually adjusted for inflation.
- Enbridge will deactivate use of the current dual pipelines in the Straits “as soon as practicable” following completion of the tunnel and construction of the Straits Line 5 Replacement Segment.
- Enbridge is required to conduct work at other Line 5 water crossings.

On her first full day in office, Governor Gretchen Whitmer requested an opinion from Attorney General Dana Nessel regarding the constitutionality of PA 359 forming the new Mackinac Straits Corridor Authority, as well as if the actions taken by the new board are legal. The Governor...
is questioning whether the new law violates the Michigan Constitution in several ways, including:

- Whether the amended law violates a statute that requires the main focus of an act to be reflected in the title.
- Whether the six-year appointments of corridor authority board members violate a constitutional requirement limiting appointments to four-year terms.
- Whether the amended law violates parts of the Michigan Constitution related to tunnel construction and operation.
- Whether the law is a special or local act prohibited by the Michigan Constitution of 1963 because a general act could have been made applicable instead. (For example, there are many general acts providing for the creation of authorities such as the Regional Transit Authority Act of 2012, the Regional Convention Facility Authority Act, and Chapter 6A of the Aeronautics Code of the State of Michigan.)
- Whether the new authority possesses more power than it is entitled to by law or the Constitution.
- Whether the authority and its actions are invalid if the authority is found to violate State law or the Michigan Constitution.

Amid the legal review, the Michigan Department of Environmental Quality (MDEQ) issued a permit to Enbridge for geotechnical borings, necessary to determine if the substrate below the Straits of Mackinac is suitable for a tunnel. The permit approval came despite warnings from the Attorney General that “in no way should any entity rely on this act to move forward unless and until these matters have been resolved.” A spokesperson for the Attorney General stated the review should be done by early March.

In addition to the focus on the Straits of Mackinac, Enbridge is required to take action at the Line 5 water crossings other than the Straits. In June of 2018, Enbridge submitted a report, Enhancing Safety and Reducing Potential Impacts at Line 5 Water Crossings. In the Report, Enbridge and representatives of the State jointly identified nearly 400 Line 5 water crossings in Michigan and prioritized a total of 74 of them, organizing them into 11 area groupings. The Report identified a series of specific Action Items to minimize the likelihood of potential leaks and reduce the consequences should a release occur. Thirteen sites have been targeted for near-term actions. Enbridge is to restore cover and stabilize banks at Point Aux Chenes and address exposed pipeline at the tributary to Paint River. They are also to conduct field work to gather additional information at the following water crossings:

- Whitefish River - MP 1358
- Rapid River – MP 1356
- Tributary to Southwest Branch Fishdam River – MP 1373
- Elm Creek – MP 1691
- East Branch Black River – MP 1442
- East Mile Creek – MP 1436
- Paquin Creek – MP 1448
- Pointe Aux Chenes River (1) – MP 1466
- West Branch Paquin Creek – MP 1447
- West Mile Creek – MP 1436
- Red Creek – MP 1563

The following table from the Report includes the prioritized water crossings and identifies actions items for the portion of inland pipe from Mackinaw City to Indian River.

Continued on page 7
### Summary of Individual Prioritized Water Crossings and Action Items – Mackinaw to Indian River

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The ultimate future of Line 5 is still unknown at this time. The result of the legal review by Attorney General Nessel regarding the constitutionality of the Snyder/Enbridge legislation and actions of the Mackinac Straits Corridor Authority will determine the next steps. From day one, the Watershed Council expressed concern with Public Act 359. Our concern revolved around both the process and haste in how the Mackinac Straits Corridor Authority was formed and how quickly binding agreements were signed that will impact the future of Line 5 and pose a risk to Michigan's public health and safety and the water resources for the next 100 years. Hopefully, the review is the first step towards the timely decommissioning of Line 5. We also look forward to working with the new Administration to ensure oil and natural gas liquid transportation in Michigan is done in a manner that protects public health and safety and the state's economy and natural resources.

*Stay tuned for more updates.*