

Emmet County Lakeshore Association

Summer 2018 Newsletter



Dear ECLA Members and Friends:

Your ECLA Board continues to focus its efforts in the case of Little Traverse Bay Band of Odawa Indians v. Governor Snyder, et al. in Federal Court (Western District of Michigan) where ECLA is a party defendant. We are also staying involved in other issues impacting or of interest to our members, particularly the issue of Enbridge's Line 5 in the Straits of Mackinac. We hope you find our other update articles of interest.

The Tribal Lawsuit: We all appreciate that the presence of Indians in Emmet County has enriched our history and the quality of life in our area. It is for many of us truly unfortunate that the Little Traverse Bay Band of Odawa Indians (LTBB) chose to commence a lawsuit against all of us as residents, property owners, and business owners, and against our governmental institutions. The lawsuit is based upon the Tribe's allegation, for the first time, that an 1855 Treaty established its alleged rights over the area. In addition to Governor Snyder and the State, the defendants in the litigation are the Counties of Emmet and Charlevoix, the Cities of Petoskey and Harbor Springs, and the Townships in the affected area, as well as ECLA and The Protection of Rights Alliance (PORA), as intervening defendants. We did not start this lawsuit. We are defendants. If defendants do not defend in litigation, they lose. What do we lose? The answer to this question was set forth in ECLA's 2017 Newsletter, a reprint of which is attached to this letter. To defend is expensive. We are extremely pleased to see the broad base of support from contributing individuals and businesses, and the active defense being conducted by our governmental bodies. They all get it. Our residents and property owners also appear to be getting it—no easy task given the lack of supportive articles in our local papers. Many do not want to offend the Tribe's members with whom they have contractual and project agreements—a position we don't fully understand given that, in effect, all of us are defending, not bringing, this lawsuit. Individuals who a year ago did not see this lawsuit as a threat to themselves personally, now are seeing the threat.



How is the case being managed to assure that work is coordinated between the various lawyers handling the defense? There is a group of volunteers who have stepped up to help manage the case and promote funding for the defense. We have called ourselves a steering committee. These individuals are:

Jim Ramer, Harbor Springs

Lou Kasischke, Redmond Township
V.P. of ECLA; President of the PORA

Gordon Johnston, Wequetonsing

Gary Rentrop, Cross Village
President of ECLA

Clark Elwood, Bay Harbor

Phil Trottier, Bay Harbor

Gary Steward, Harbor Springs.

Recently, Wequetonsing's homeowners association issued a letter to its members like the one attached to this letter. It asked for contributions of 1% of an individual's property value. The response was amazingly supportive, with substantial pledges being made. The attached letter and sample pledge card has also been sent out to other associations with a very positive response. The 1% amount is far less than what we anticipate would be the decline in property values if the area is found by the Court to be a Reservation.

So a sincere thank you to all our members, friends and neighbors who see the importance of funding a competent defense, and a sincere thank you to all of you who will consider further funding and perhaps a contribution of 1% of your property value. Again, if we do not defend, all of us will lose. Please make a point of joining us at the ECLA Annual Meeting at 11:30 a.m. on August 17, 2018 at Birchwood Country Club so you can hear a presentation by our lawyers on what has transpired in the past year of litigation, and what is expected to occur in the coming year.

Those who wish contribute to the ECLA/PORA Defense of the Tribal lawsuit, please make a tax deductible contribution to:

PORA Foundation
c/o Sara Smith, CPA
321 Spring Street
Harbor Springs, MI 49740
ECLA

Gary Rentrop
President, ECLA

Lou Kasischke
Vice President, ECLA

Reasons People Will Not Like Living On An Indian Reservation

The Little Traverse Bay Bands of Odawa Indians Tribe started the fight in United States Federal Court to establish most of Emmet County and a significant part of Charlevoix County as its Indian Reservation. If the Tribe succeeds, the character, culture, and way of life now enjoyed here will drastically change—for the worse.

As of now, the Tribe is not claiming legal title to land owned by non-Indians. But here are just some reasons why the quality of life and sense of tranquility) currently enjoyed by non-Indians won't continue if a court rules they are living on an Indian reservation.

- 1. Property Values Drop.** Given the many attractive options in northern Michigan, why would anyone build a new home or buy an existing home on an Indian Reservation? Buyers can go elsewhere. Property values will fall.
- 2. Property Tax Revenue Drops.** At the same time as property values fall, the Tribe and its members can assert that their property is exempt from local or state taxation—just as happened in the Upper Peninsula with members of the Keweenaw Bay Tribe, who no longer pay taxes. Schools and other public services will suffer and diminish.
- 3. Residents Lose Protections.** Residents in historic communities, resort associations, golf and retirement communities, and condominium associations think they have land use protection via deed restrictions and association documents. Not necessarily so. If the Tribe or any of its members is involved in a dispute, they can take it to Tribal Court. Guess who wins?
- 4. No Zoning Laws Apply.** Zoning and land use regulations will not apply to the Tribe or its members. So, how will you feel about a wind farm, a fast food restaurant, or an auto body repair shop going in next door to your residence? Regarding land use, there is no stopping the Tribe or any of its members from doing whatever they want, wherever they want it.
- 5. Gambling Explodes.** Gambling locations (machines in grocery stores, gas stations, convenience stores, hotels, motels, etc.) and fast food stores will explode all over Emmet County. The Tribe and each of its members are exempt from State and local zoning, health or other regulations. Federal requirements for the State to agree to tribal gambling apply only to some types of gambling—which is why the Tribe could open its newest slots-only casino in Mackinaw City even though the City voted against it. Tribes in other states have put slots in gas stations while tribal members opened smoke shops selling tax-free cigarettes. Think about how all this will affect the local character, culture, and lifestyles.

6. Michigan Law Not Applicable. State and local law does not apply to the behavior and activities of the Tribe or its members. Our police will have no authority over the Tribe or its members. This condition leads to social instability, jurisdictional nightmares, and potential chaos.

7. Tribal Control of Development. The Tribe will directly control non-Indian businesses and development through its power to control federal environmental permits regarding air quality, water quality, water usage, water discharge, wetlands, etc. Nothing significant in this area will happen without Tribe control. New investment by non-Indian businesses will be dead.

8. Tribal Laws Apply. Non-Indian businesses, and even public institutions such as schools and hospitals, can be dragged into Tribal Court for perceived violations of Tribal laws. For example, if your business employs a Tribal member (even without knowing he or she is a Tribal member), that member can make a claim in Tribal Court for violation of Tribal employment and discrimination laws. What a mess. What a nightmare.

9. Business Values Drop. Non-Indian business values will fall. Non-Indians won't be able to compete with Tribe or Tribal member owned businesses that don't pay taxes and are not subject to the multitude of state and local regulations, such as parking, signage, taxes and the like. If your business includes selling liquor, the Tribe may well control who gets future permits and licenses, and impose taxes on these businesses. Why would a non-Indian want to do business here? Existing non-Indian businesses may be driven out of town.

Make no mistake, if the Tribe succeeds, it will dominate everyday life in Emmet County. In fact, the Tribe's Constitution demands it. Unless the Tribe allows it, as a non-Indian, you have no vote on Tribal laws or on the election of officials; you cannot attend meetings of the Tribe, and your lawyer cannot even appear in Tribal Court.

This historically premium resort and retirement home area will lose its national appeal as a coveted destination due to the negative aura of being under the jurisdiction of Odawa Tribal leaders within an Indian Reservation. Given other premium choices, who would choose to come here?

The Tribe says none of this will happen. Don't be fooled. Just Google what is happening on Indian Reservations all across America. Furthermore, ask this question: why is the Tribe asking the Federal Court for the power to make all this happen if it doesn't plan to use that power?

We need your help to fight back. You can help by making a tax deductible contribution to the Protection of Rights Alliance Foundation, P.O. Box 28, Harbor Springs, MI 49740.

What's with the Odawa Sign

Q: We see these signs on Levering Road, State Road and the Bridge at Middle Road over Greenbriar Road. What do these signs mean?

A: It means the Bureau of Indian Affairs (BIA), an agency of the U.S. Government, is funding the road and bridge maintenance improvements.

Q: Where does the BIA get the money for these roads and bridges?

A: From your tax dollars.

Q: Does the Little Traverse Bay Band of Odawa Indians (LTBB) provide funding beyond what it receives from the BIA?

A: No.

Q: Why is the BIA funding these roads?

A: The BIA funds road systems located in areas that are considered as "major transportation corridors that provide access for tribal communities and the general public." These roads and bridges that receive BIA funding are identified on the National Tribal Transportation Facility Inventory (NTTFI).

The LTBB acts as a conduit for these federal monies. Construction contracts are administered by the Emmet County Road Commission, with payment being made by the conduit LTBB to the Road Commission. State Road, the Middle Road Bridge and the Old Mackinaw Highway funding was \$1.9 million.



New Pending Laws When Passing Bicyclists

For those of us traveling by automobile on M-119, Lake Shore Road, we are ever aware of the bicycle "rallies" that are taking place on the road. This summer there are 11 scheduled events. M-119, as we all know, has very narrow, 8 foot wide lanes. Proposed new laws with regard to passing bicycles are scheduled to be sent to the Governor for signature. As of June 12, 2018, Senate Substitute for House Bill 4265 was passed by the Senate which includes the following language revising MCL 257.637:

"(3) The driver of a vehicle overtaking a bicycle proceeding in the same direction shall, when otherwise permitted by this section, pass at a distance of 3 feet to the right of that bicycle or, if it is impracticable to pass the bicycle at a distance of 3 feet to the right, at a safe distance to the right of that bicycle at a safe speed."

Also on June 12th, Substitute Senate Bill 4185 was passed by the Senate which includes the following language revising MCL 257.636:



"(2) The driver of a motor vehicle overtaking a bicycle proceeding in the same direction shall pass at a safe distance of at least 3 feet [] to the left of that bicycle or, if it is impracticable to pass the bicycle at a distance of 3 feet to the left, at a safe distance to the left of that bicycle at a safe speed, and when safely clear of the overtaken bicycle shall take up a position as near the right-hand edge of the main traveled portion of the highway as is practicable.

(3) Notwithstanding section 640, if it is safe to do so, the driver of a vehicle overtaking a bicycle proceeding in the same direction may overtake and pass the bicycle in a no-passing zone."

We have discussed the first revision quoted above (passing on the right) with the attorney in the Legislative Services Bureau who drafted the provision, who explained that this provision was meant to address the situation of passing a bicyclist who is trying to make a left turn. The reference to "when otherwise permitted by this section". is referring to a different portion of the statute which allows passing on the right of a "vehicle" about to make a left turn. However, because the definition of "vehicle" under the motor vehicle code does not include bicycles (it excludes "devices exclusively moved by human power"), this new statutory provision creates confusion and needs to be corrected by the legislature.

Good luck navigating M-119 and other roadways during the bike events.

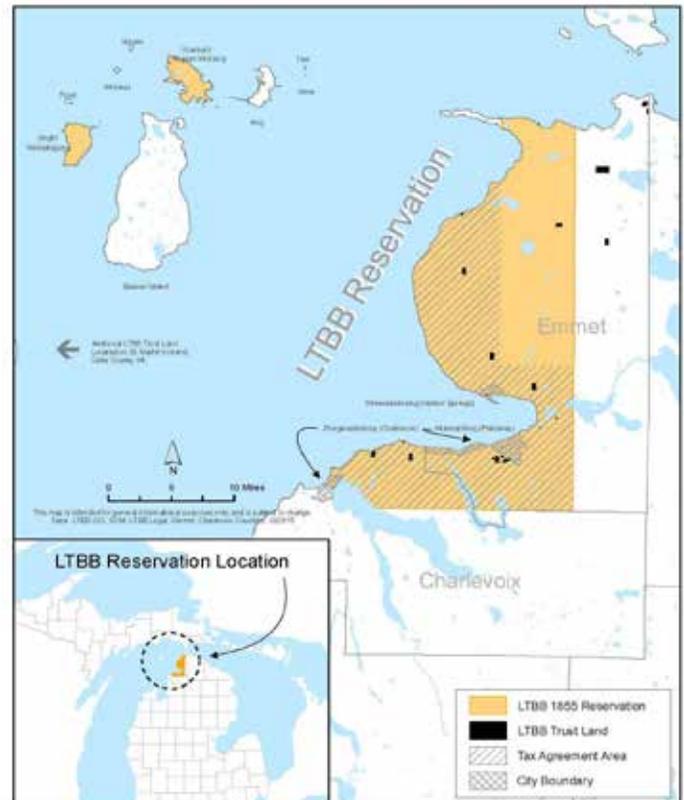
Tribal Lawsuit Update 2018

Litigation Work has been intensive during 2018:

As you know from our prior update memos there has been extensive work in the past year. The Tribe's legal team now consists of 12 attorneys. The Tribe has added additional expert witnesses even including a linguist. Thousands of pages of expert reports have been filed. The report of the Tribe's lead expert, Dr. James McClurken, PhD, alone was nearly 1,200 pages long.

This past year, depositions of experts have been taken in Minnesota, Michigan, Illinois, and Kentucky. Recently, the Tribe's legal counsel has sought all reports prepared by our expert, Dr. Michael Lawson, PhD, even asking for reports prepared by Dr. Lawson for other clients in completely unrelated cases. This has required Dr. Lawson to hire independent counsel, the law firm of Dickinson Wright, the cost of which The Protection of Rights Alliance (PORA) will cover. Lance Boldrey, legal counsel for ECLA and PORA, will be our speaker at our August 17, 2018 Annual Meeting at Birchwood Country Club. Lance will provide a more complete update on what has transpired and what he has learned about the Tribe's claims at the annual meeting. Please attend this very important event.

Little Traverse Bay Bands of Odawa Indians Reservation and Trust Lands



Understanding the Tribe's 1855 Treaty claim and the Defendants' contrary position:

The intent of this article is an attempt to explain the basics of what is a fairly complex case by providing the parties' respective positions and the operative provision of the 1855 Chippewa and Ottawa (now Odawa) Treaty.

The 1855 Treaty Language: The treaty provides that a Tribal member, subject to the Treaty, could for a period of 5 years claim from land set aside by the government (the area illustrated on the map in this Newsletter) 80 acres for the head of a household and 40 acres for a single person. If the land so selected continued to be effectively "homesteaded" for an additional 5 years, the Indian would receive a deed to the land. Thereafter "the land which was not claimed that was unappropriated after the expiration of the last mentioned term may be sold or disposed of by the United States as in the case of all other public land" (emphasis added) –Excerpt, Article 5, Treaty of Detroit 1855 Ottawa and Chippewa.

Effect of the 1870s Act of Congress: An Act of Congress in the 1870's (the 5 year time period contemplated in the Treaty was delayed) was a formal act of Congress restoring the land to public market as required by the Treaty.

Tribe's Claim: It is the claim of the Tribe that this 1870's Act, by reason of the Tribes' 1994 Recognition Act, prevented this Act from constituting a diminishment of the size of the reservation.

ECLA, PORA and Defendants' Claim: It is the position of the Defendants in this case, including ECLA and the Alliance, that the Treaty, by its very language, never created a permanent reservation for the Tribe, regardless of how a court would interpret the application of the 1994 Recognition Act on the 1870's Act of Congress which by its terms returned the land to public market for sale.

Tribe files a Motion for Summary Judgment on the question of diminishment:

You may recall the case is divided into two parts. The first part is being called 1a and 1b.

1a) Is there an Indian Reservation, i.e. that area illustrated on the map in this newsletter?

1b) If there is a reservation, has it been diminished or disestablished – meaning, did the U.S. Congress act to reduce the size of the reservation?

In March, the Tribe filed a Motion for Summary Judgment. The Tribe is asking the court to determine that the 1994 Tribal Recognition Act of Congress prevents the defendants in this case from claiming diminishment or disestablishment of its claimed reservation. Prior to the 1994 Recognition Act, the LTBB was not recognized as a Tribe. The Act confirms LTBB as a recognized Tribe and the Recognition Act contains the following language upon which the Tribe relies to support its claim that the 1870's Act did not diminish its reservation:

"All rights and privileges of the Bands, and their members thereof, which may have been abrogated or diminished before the date of the enactment of this Act are hereby reaffirmed."

The Tribe's claim is that because of the language of the 1994 Restoration Act, the 1870's Act which restored the claimed reservation land to "public market" could not be considered a diminishment of its reservation. That reservation area is equal in size to that area set forth on the Map in this Newsletter. It is their claim that the reservation was not diminished, but that non Indians were simply invited to buy land in the reservation by the terms in the treaty.

The Defendant's position is that the Treaty by its language never created a permanent reservation, regardless of how one interprets the effect of the 1994 Recognition Act upon the 1870's Act of Congress which restored the land for public sale. In addition, the Defendant's position is that the 1994 Recognition Act must be read in the context of what it was intended to do, simply to recognize this band of Indians as a federally recognized Tribe and nothing more.

Contract Law v. Indian Law:

If this was an ordinary contract case, I would predict we would win. The language of the 1855 Treaty seems to be fairly clear – a permanent reservation for the benefit of the Tribe was not created. However, under Indian Law our U.S. Supreme Court has ruled that a court must decide how the Indians understood what the Treaty meant. Equal weight is not given to each party when interpreting a treaty. In this type of case, the ethnohistorians and linguists are those who tell us what the Indians thought the Treaty meant. A good example of how this can play out is in the case of the Keweenaw Bay Indian Community v. State of Michigan in 1991. In that case, the Treaty language was quite clear, stating:

"The lands reserved at Keweenaw Bay were to consist of all the "unsold lands" in certain specified townships... " There were lands within the area that were owned in fee by whites as well as by Indians."

The court, however, stated "... when the Treaty is viewed from the Indian's perspective ... it did not mean that the Indians would have understood their reservation as encompassing something less than the townships specified in the Treaty," and the court, despite Treaty language to the contrary, included sold lands in the reservation. The court effectively disregarded the language "all of the unsold lands," which, in contract law, would have resulted in such lands being excluded.

2018 Cases in the US: It's what we don't know could happen that creates a big risk if the Tribe is successful

While there are many Tribal cases being decided around the country, there are two I find particularly interesting and which illustrate this point – it's what we don't know could happen that creates a big risk from this type of claim.

In Oklahoma, a U.S. Federal Court of Appeals reviewed an appeal by an Indian convicted of murder in a state court. The Indian asserted the murder occurred within the boundaries of an Indian reservation. The state disputed this claim. This resulted in an examination of the reservation boundaries and it was determined that the murder did occur within the reservation boundaries. The court found that almost half of Oklahoma is within a reservation, including all of the City of Tulsa. The state court was found to not have jurisdiction in the murder case. The case is on appeal to the U.S. Supreme Court.

In Wisconsin, a federal court heard a case brought by the Tribe that the state's road culverts needed to be replaced to prevent damage to the Tribe's fishing rights. The court ruled that the state had to replace all the culverts, the cost of which is estimated to be in excess of one billion dollars. The case was appealed to the U.S. Supreme Court. By an 8 to 1 decision, the lower court opinion now stands, and the state of Wisconsin has to replace the culverts.

Court Schedule Going Forward:

Briefs have been filed by the parties on the Tribe's Motion for Summary Judgment. No hearing date has yet been scheduled for the Tribe's motion. Because of the Motion for Summary Judgment, which was filed by the Tribe and was not anticipated in the court's schedule, discovery has been extended to September 29. While expert witness depositions have been taken there remain as many as 80 lay witnesses yet to be deposed. A 5 day trial was scheduled for late 2019, but this date may be delayed given the extension of discovery.

Enbridge Line 5 Under The Straits of Mackinac

Much has been written in the past year about the Enbridge Line 5 under the Straits of Mackinac. ECLA provided an article on Line 5 in its June 2017 Newsletter. Here is a recap since our last Newsletter and an update on Line 5.

- **What is Line 5 and how did it become a concern?**

Line 5 was built in 1953. It consists of two 24 inch diameter lines. The pipe lies on the bottomlands of the Straits of Mackinac. Enbridge Energy, Inc. (Enbridge) an Alberta Canada Company was conveyed an easement from the State of Michigan along the bottomlands for this line. The line runs from Alberta Canada, crosses into Michigan at the Straits of Mackinac, then runs southeast through Michigan and crosses the St. Clair River to a Canadian Oil Refinery in Sarnia, Canada. See map. The Line carries from time to time a variety of petroleum products, but usually light crude oil and natural gas, and transports approximately 23 million gallons a day. No one was concerned or even really aware of the existence of Line 5 until the rupture of a line owned and operated by Enbridge occurred in Marshall, Michigan at the Kalamazoo River, where one millions of gallons of oil was discharged into the river causing extensive environmental damage. The discharge into the Kalamazoo River ran undetected for over 18 hours.

- **What would be the consequence if a rupture were to occur in Line 5 in the Straits of Mackinac?**

Experts have opined that this would be the worst place for an oil spill to occur. The Straits have multiple and varying currents, sometimes moving west, sometimes east, and in different directions at various depths. Since the Straits are 5 miles wide, how could the spread of oil (depending on the product, which could either sink to the bottom or stay on the surface) be contained in such a large area? The University of Michigan did modeling showing potential diffusion of oil throughout Lake Michigan and Lake Huron. This modeling was provided in the June 2017 Newsletter and is again provided in this Newsletter. If a spill were to occur when the Straits are covered in ice, the spill would migrate with little to no chance of containment. Jurisdiction for addressing an oil spill falls under the U.S. Coast Guard. The Admiral who heads the Coast Guard has said under oath, that an oil spill in the Straits of Mackinac could not be contained. Apart from the ecological damage that would occur from a Line 5 spill in the Straits, drinking water could be threatened for 5 million people.

- **Concerns over Line 5 have recently heightened:**

No independent inspection of the pipeline occurs: Safety and quality issues concerning pipelines fall under the federal Pipeline Hazardous Materials Safety Administration (PHMSA). PHMSA representatives have made it very clear they do not have the staff to perform inspections, but limit their roll to reviewing records supplied by the pipeline companies. Nothing in the records provided by Enbridge to PHMSA would raise concerns. But it appears their records were incomplete or inaccurate.

Pipeline support anchors: The pipes are required to be supported with bridge-like anchors affixed to the floor of the Straits. The pipelines were discovered to be missing several bridges. Evidence showed the lines actually swaying with the currents, raising concern that this movement could cause pipeline failure.

Pipeline missing areas of protective coating: From an examination of Enbridge's records it was discovered that there were areas where the protecting coating no longer existed, called "Holidays". The missing coating allows the steel pipe to rust. This fact was not disclosed by Enbridge.

The dragging anchor: In March 2018 a barge anchor was dragged across the bottom of the straits severing an electrical transmission cable owned by American Transmission Company and releasing 500 gallons of insulation fluid into the water of the Straits. The anchor continued to drag denting and damaging the protective coating of Line 5. As a result of this anchor strike, the Governor issued an emergency order prohibiting ships from dropping or using anchors in the Straits of Mackinac without prior permission. Indian Tribal members are exempt from the order's requirements.

Head of Coast Guard statement: As already noted, the Coast Guard Admiral has stated the Coast Guard could not handle a spill in the Straits. Unlike the catastrophic Kalamazoo spill which was contained within a 25-mile segment of the river, containment in the Straits is not possible.

- **The Task force:**

In June 2014 Attorney General Schuette and then-Director of the MDEQ, Dan Wyant, formed a Michigan Petroleum Pipeline Task Force (Task Force). The charge to the Task Force was to provide a two-part report concerning Line 5 -- a Risk Assessment report examining the risk of Line 5 in the Straits and an Alternatives report to examine what alternatives there were to transport the products of Line 5 other than Line 5. The final report was not released because of a conflict of interest involving one of the authors who had previously done work for Enbridge. The Governor now is not waiting for the Task Force report and is moving forward with the tunnel alternative to Line 5.

- **The Tunnel alternative:**

A tunnel in the lakebed under the Straits appears to be the option that is front and center for consideration by Governor Snyder and Enbridge. In November 2017 the Governor, without involvement of his Task Force and without waiting for its final report, proceeded with an agreement with Enbridge for plans on the feasibility of a tunnel beneath the Straits in the lake bottom that would house multiple utility users. While there are no formal plans, the tunnel may be located 100 feet under the lake bed, and be some 20 feet in diameter.

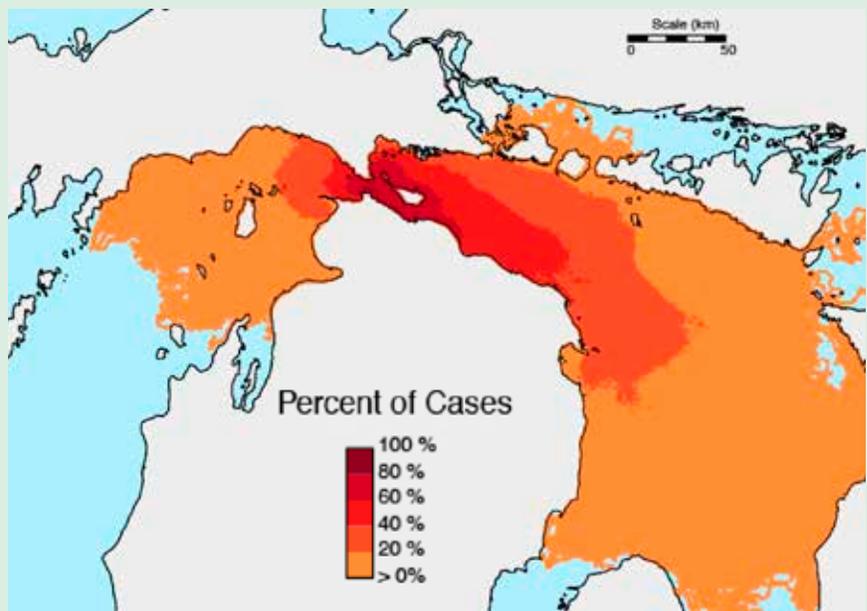
Critics point out it will take 7 to 10 years to construct. What if there is a rupture in Line 5 during this period? Shutting down the Line for 7 to 10 years would significantly impact the propane supplied by Line 5 to the Upper Peninsula. Propane could be supplied to the U.P. through trucking or via a new propane pipeline on land, but this would result in an increase in propane costs for the U.P. area being serviced. Who pays the cost of building a tunnel? The cost of building a tunnel will be very expensive – \$350 to \$500 million. Enbridge released a report on June 15, 2018 stating two acceptable alternatives would be the tunnel and fitting the pipes inside another protective pipe. It is expected that Enbridge will agree conceptually to the tunnel but will require financial participation by other users who may well come forward and contribute to the cost. It is highly unlikely Enbridge will fund the tunnel on its own. Enbridge is not in great financial shape. In May, Enbridge announced it will sell a U.S. gas pipeline business and part of its renewable energy portfolio for a combined \$2.5 billion of its \$65 billion debt as a first step in its debt reduction plan. Other possible users of the tunnel could be the American Transmission Company whose electrical line was recently severed. However, ATC is in the process of installing new lines so they likely will not see a need for a tunnel. Also TransCanada's Great Lakes Transmission Company operates two natural gas pipelines. AT&T has a fiber optics cable on the lakebed. The impact of one of these lines failing is likely not that significant. Will they be willing to contribute to the cost of constructing a tunnel?

- **Treaty Fishing Rights:**

All 12 Tribes in Michigan in a concerted effort are calling for a shutdown of Line 5. The Tribes are of the position that they have an independent cause of action against Enbridge based upon their 1836 Treaty fishing rights. A spill, it is claimed, would irreparably damage tribal fishing rights. Protection of treaty fishing rights was also the basis for forcing the state of Washington to foot the bill to replace hundreds of road culverts to help the salmon fisheries. This will cost the State of Washington billions of dollars. The decision was made by the federal 9th Circuit Court of Appeals and recently upheld by the U.S. Supreme Court as the result of a split decision.

While there are those who are of the opinion that if Line 5 is properly maintained it poses no real threat of rupturing, there seems to be a growing consensus that it is time to pursue a safer alternative to the underwater pipeline.

Built in 1953, Line 5 runs from Superior, WI, across the Upper Peninsula of Michigan, directly through the Straits of Mackinac, and down to Sarnia, MI. The pipeline is made up of two 20" pipes that carry nearly 23 million gallons of oil and natural gas liquids daily. Line 5 has failed 29 times since 1968, spilling at least 1.13 million gallons of oil. These 65-year-old pipelines run at depths between 100 and 270 feet in the Straits, directly exposed to the water. Built and operated by Canadian company, Enbridge Inc., less than 10% of the the oil Line 5 is used in Michigan. Line 5 threatens the drinking water supply for 5 million Michigan residents and the Pure Michigan economy. It is time for the state to evict En bridge from the Mackinac Straits and shut down Line 5 because of the danger its oil pipelines pose to the Great Lakes.



University of Michigan model shows potential reach of oil spill in the Straits of Mackinac under different scenarios.

Serious Decline to a Renaissance in Native Great Lakes Fish

By 2003, with the introduction of the invasive mussels (zebra and quagga) which filter the plankton from the lake. Native species of lake trout, perch, chub and whitefish were struggling, or all but gone because their food source was gone. At the same time, the Chinook salmon, a species introduced to consume an early invasive species, the alewife, were also in steep decline. The alewives were dying off from the lack of plankton as a food source. By 2011 the Chinook and alewife were all but gone.

To biologists' amazement, the native fish species surged with the alewives' disappearance. It turned out the alewife was killing the lake trout. The alewife contains high levels of an enzyme that causes the trout not to reproduce. The alewife also consumes trout eggs.

So where are we today? There's a lot of good news.

Trout: On a major rebound with the alewives gone. They also find an abundant food source in the round goby, yet another invasive species, which feed upon the mussels which lie on the floor of the lake and lake structures.

Walleye: On a major rebound, feeding on the round goby.

Smallmouth bass, perch: Also on a major rebound, feeding on the round goby.

So it's thanks to the ugly invasive round goby with its protruding teeth for the rebound of native species to a level not seen since the mid-1900s. So why the teeth? The round goby serves another benefit—it consumes the mussels, and its teeth are used to break the shells of mussels.

Whitefish: Even more amazing is the comeback of the whitefish. Whitefish have small mouths, and no teeth, making it totally dependent upon plankton as a food source. So how is it able to survive and rebound without the plankton food source? It appears to be adapting to new food sources. It consumes the mussels and with its stomach muscles grinds the mussels into a digestible food source. We are told Great Lakes fishermen see that the stomach muscles of the whitefish have increased in size and strength. Also the whitefish now will consume other small fish, which they never did before.

This renaissance may prove fleeting. Access to the Great Lakes remains open through the St. Lawrence Seaway shipping channel, with invasive species entering the Great Lakes from the bilgewater of ships. Invasive species, particularly the Asian carp, can also enter through the backdoor – the Chicago Sanitary and Ship Canal. To date, we have 186 invasive species in the Great Lakes. What would it take to again send the Great Lakes into a fresh water fish decline?

What is New on the Asian Carp?

Recently, an Asian carp was caught less than 10 miles from Lake Michigan – beyond the barriers designed to keep them out. These fish, which can grow to 70 pounds, are filter feeders who ingest large quantities of plankton tiny plants and animals that are at the base of the food chain. The government has plans to install additional electric barriers at locks and dams near Joliet, Illinois. Underwater speakers would sonically blast the fish as an additional deterrent. Recently, some Great Lakes ecologists speculated that even if the carp reached Lake Michigan, they will find little to eat so there should be little concern, since they will not survive in Lake Michigan. The mussels, mostly now quagga mussels, have filtered out the lake's plankton. Plankton has all but disappeared from the lake. However, read on in this Newsletter about how whitefish, which once survived solely on plankton, evolved in a very short time and now consume other food sources.

School Millage for Athletic Facility

You may be a taxpayer in the Harbor Springs School District who doesn't have a vote on local school millages. This is because your property is not declared as your primary homestead. So as the "locals" vote, you who do not have your principal residence in the area are financially impacted without having a vote. As an out-of-formula district, Harbor Springs School District does not receive State funding for their students. The public schools are funded by the millages that are passed without many of you who have a substantial investment in the area being able to vote. Last November, a millage for athletic facilities improvements was passed. It did not result in a tax increase, but replaced a previous millage that was ending. At the April 19th school board meeting, the board unanimously accepted the \$3,866,000.00 bid by Spence Brothers to construct the Athletic Improvement project.

Great Lakes Water Levels Update

The following is an update by the U.S. Army Corps of Engineers from the week of May 4, 2018. The Great Lakes' (GL) water levels are all above their long-term average May levels. Lake Superior is 2 inches lower than it was at this time last year, while Lakes Michigan, Huron, St. Clair, and Erie are 1-2 inches above last year's levels. The Corps expects all of the five GLs should reach above-average levels during 2018.

Over the next 30 days, Lake Superior and Lakes Michigan and Huron are both projected to rise 3 inches, while Lakes St. Clair and Erie are expected to climb 2 inches and 1 inch respectively. Lake Ontario is forecasted to rise 4 inches during the next month. The Great Lakes' water outflows from Superior to Lakes Michigan and Huron via the St. Mary's River, down the Detroit River and through Lake St. Clair to Lake Erie, then via the Niagara River to Lake Ontario and on into the St. Lawrence River. All of this outflow is predicted to be above the average May level.

The forecasted water levels (above sea level) for May 4, 2018 in feet are: Superior 601.97; Michigan-Huron 581.25; St. Clair 576.12; Erie 573.59; and Ontario 246.62.

The Great Lakes' upward trend means pleasure boaters and commercial shippers won't have to worry about hitting bottom in shallow channels. But environmental regulators warn of possible shoreline erosion.

Figure 1 predicts the final 2018 water levels above the average mean for the Great Lakes.
<http://lre-wm.usace.army.mil/ForecastData/DailyLevelsEnglish.pdf>

Great Lakes Fiber Optics Update

Earlier this spring, you may have noticed workers walking the power lines. Since April, contracted workers have been gathering engineering data that will help support construction efforts and operation of the fiber network.

In July this year, contracted construction crews will begin attaching a fiber optic cable to our poles, a process which will be completed in 2020, or possibly sooner. This fiber optic cable will deliver high-speed Internet and phone service to members. The last step in the construction phase is extending the fiber optic cable into the homes and businesses of GLE members who become subscribers of this exciting new service offering.

If all goes as scheduled, a small number of GLE members will have high speed fiber optic service by the end of the year. In 2019 and beyond, we plan to add many more new subscribers.



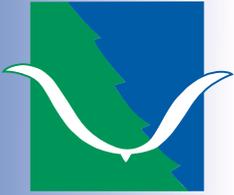
Volunteer Botulism Monitoring Program—2017 Report

Courtesy of Dave Edwards, Monitoring and Research Director Tip of the Mitt Watershed Council P: (231) 347-1181 Ext. 109

Since 2007, the Watershed Council has recruited volunteers—Beach Rangers—to document bird fatalities along the Lake Michigan shoreline in Charlevoix and Emmet Counties. In 2017, Beach Rangers surveyed approximately 47 miles of Lake Michigan shoreline, documenting 81 dead birds. Many of these were likely killed by avian botulism. Although many birds were documented, this is far fewer than in 2016, when 162 dead birds were documented. In 2017, the hardest hit were common loons, white-winged scoters and long-tailed ducks. Similar to 2016, the greatest number of documented fatalities occurred in early to mid-November. As you may recall, avian botulism is believed to be linked to the following chain of events:

1. Algal blooms create algal mats, causing naturally occurring botulism while creating an anaerobic covering of the botulism on the floor of the lake which causes the botulism to become toxic with botulism poison.
2. The invasive mussels consume and ingest the toxin. The mussels are immune to the poison.
3. The invasive round goby consume the mussels.
4. The now poisoned goby is consumed by the fish-eating birds in the lake, usually during migration.
5. The birds develop a paralysis, unable to hold their heads up, and they drown.
6. The carcasses of the birds wash ashore and impact land birds and mammals.

The start of all of this are the algal blooms. Algal blooms vary significantly from year to year. This variation may be the result of varying rainfall (runoff from non-point sources such as farm fertilizers) or varying water levels and water temperatures. No doubt there are other factors that come into play.



Emmet County Lakeshore Association

Post Office Box 277
Harbor Springs MI 49740

In unity, there is strength

Great Lakes Restoration Fund:

This fund provided \$300 million to target the biggest threats to the Great Lakes. President Trump's budget slashed the funding from \$300 million down to \$30 million. The new Omnibus Spending Bill restores the full \$300 million. President Trump had threatened to veto that Bill but then reluctantly agreed to sign the Bill. Good news for Michigan, Ohio, Wisconsin, Indiana, Illinois, Minnesota, Pennsylvania, New York, Ontario, Canada, and the Great Lakes.



What is the Survival Status of the Endangered Piping Plover?



USFWS Jerry Goldner | flickr.com

The Great Lakes piping plover population was federally listed as endangered in 1986. There has been an increase in the number of plovers since 1986 but they remain vulnerable to extinction due to the lack of suitable, undisturbed habitat. Breeding estimates demonstrate that long-term management, protection, and research have led to cautious optimism for long term recovery.

The University of Michigan Biological Station (UMBS) has had success, albeit on a small scale, in captive rearing and reintroduction of the plover into plover habitat. They are using abandoned eggs taken from the breeding areas students at UMBS have located. If a nest is abandoned, the eggs are brought to the UMBS for artificial incubation, hand-rearing and release. The very cute endangered plover chicks can be seen at the bio station.

Emmet County Lakeshore Association

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Board Members Contact Info

Jim Bacus

jim@mobileapps1.com

Rob Deane

E-mail: f.r.deane@att.net

Telephone: 616.456.8463

*Mandi Garber-Secretarial Services

E-mail: northernsec@yahoo.com

Telephone: 231.373.0754

Lou Kasischke

E-mail: louk@gtlakes.com

Telephone: 231.242.0147

Jan Malott

E-mail: malottfam@aol.com

Telephone: 248.941.2804

Franz Neubrecht

E-mail: franz@franzrx.com

Telephone: 231.526.5170

Gary Rentrop

E-mail: grentrop@rentropmorrison.com

Telephone: 248.644.6970

Sue Rentrop

E-mail: srentrop@rentropmorrison.com

Telephone: 231.526.7362

Dick Selvala

E-mail: dickselvala@yahoo.com

Telephone: 231.526.5147

George Smolak

E-mail: geosmolak@yahoo.com

Telephone: 231.526.2281

Susan Stackhouse

E-mail: shstackhouse@gmail.com

Telephone: 231.526.7896

Lynn timers Walters

E-mail: lynn timerswalters@gmail.com

Telephone: 231.526.7386

Association Address: ECLA • PO Box 277 • Harbor Springs, MI 49740