



The Grand Traverse Band of Ottawa and Chippewa Indians

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September 24, 2014

Hon. Cynthia L. Quarterman, Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
East Building, 2nd Floor
1200 New Jersey Ave., SE
Washington, DC 20590

E-mail: phmsa.administrator@dot.gov
and 1st Class Mail

Dear Administrator Quarterman:

The Grand Traverse Band of Ottawa and Chippewa Indians possesses Great Lakes fishing rights reserved under the Treaty of Washington executed March 28, 1836 (7 Stat. 491). The Grand Traverse Band's off-reservation fishing rights in the Great Lakes were confirmed by federal court litigation, *see United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981).

The Straits of Mackinac is central to these Treaty-reserved fishing fights. You may be aware that a 61-year-old oil pipeline ("Line 5") extending through the Straits of Mackinac is a matter of great controversy here in Michigan.

In affirming the 1979 District Court decision, the United States Court of Appeals for the Sixth Circuit noted:

[1] 1. The treaty-generated fishing rights preserved to the Indians in the 1836 Treaty, including the aboriginal rights to engage in gill net fishing, continue to the present day as federally created and federally protected rights. The protection of those rights is the solemn obligation of the federal government, and no principle of federalism requires the federal government to defer to the states in connection with the protection of those rights.

United States v. Michigan, 653 F.2d 277, 278 (6th Cir. 1981). A subsequent federal court case confirmed that the Indian Tribes that signed the 1836 Treaty retain property rights in the Great Lakes fishery resources:

Treaty reserved rights to access traditional fishing areas and catch fish are property rights protected by the United States Constitution. *See Mille Lacs Band of Chippewa Indians v. State of Minnesota*, 853

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F.Supp. 1118, 1125 (D.Minn. 1994); *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504, 1510 (W.D.Wash. 1988).

Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources, 971 F.Supp. 282, 288 (W.D.Mich. 1995), aff'd. 141 F.3d 635 (6th Cir. 1998), cert. denied, 525 U.S. 1040 (1998).

My specific purpose in writing is to request you to identify the appropriate persons within your agency (PHMSA) with whom we can communicate regarding our questions and concerns about the oil pipeline extending through the Straits of Mackinac. Among our initial questions are:

1. Does PHMSA have any specific guidelines regarding carrying out the federal government's trust responsibility toward Indian Tribes?

2. Does PHMSA have a specified liaison for Indian Tribes?

3. With respect to Public Law 112-90 (Jan. 3, 2012),

– has the evaluation mandated by section 5(a) been accomplished? (and, if so, is it available for review?)

– has the survey mandated by section 7(a)(4) been accomplished with respect to Line 5 extending through the Straits of Mackinac? (and, if so, is it available for review?)

– has the review mandated by section 16 been accomplished? (and, if so, is it available for review?)

– has there been any consultation with Michigan Indian Tribes under section 30?

We would very much appreciate your assistance in referring us to PHMSA staff who could answer these inquiries.

Natural Resources Department

By: Desmond Berry, by WR
Desmond Berry, Manager