

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, ON BEHALF  
OF THE PEOPLE OF THE STATE OF  
MICHIGAN,

No. 19-474-CE

Plaintiff,

HON. JAMES S. JAMO

v

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP; ENBRIDGE ENERGY  
COMPANY, INC.; and ENBRIDGE ENERGY  
PARTNERS, L.P.,

Defendants.

---

S. Peter Manning (P45719)  
Robert P. Reichel (P31878)  
Daniel P. Bock (P71246)  
Charles A. Cavanagh (P79171)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Environment, Natural Resources, and  
Agriculture Division  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-7664

Peter H. Ellsworth (P23657)  
Jeffery V. Stuckey (P34648)  
Ryan M. Shannon (P74535)  
Dickinson Wright PLLC  
Attorneys for Defendants  
215 South Washington Square  
Suite 200  
Lansing, MI 48933  
(517) 371-1730

---

David H. Coburn (pro hac vice)  
William T. Hassler (pro hac vice)  
Alice Loughran (pro hac vice)  
Joshua Runyan (pro hac vice)  
Steptoe & Johnson LLP  
Attorneys for Defendants  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

Phillip J. DeRosier (P55595)  
Attorney for Defendants  
500 Woodward Avenue  
Suite 4000  
Detroit, MI 48226  
(313) 223-3866

---

**BRIEF IN SUPPORT OF PLAINTIFF'S EX PARTE MOTION  
FOR TEMPORARY RESTRAINING ORDER PENDING  
HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

The facts and law that support this motion are set forth in Plaintiff's contemporaneously filed motion for preliminary injunction and brief in support and are incorporated herein by reference. In this situation, a preliminary injunction alone is not sufficient. Given Enbridge's clear willingness to reactivate the Line 5 dual pipelines on state owned bottomlands without consulting state government officials consistent with its contractual agreements with the state, even immediately after informing the Governor that the pipelines had been shut down, a temporary restraining order is necessary to ensure that the pipelines remain inactive until the Court can hear and decide Plaintiff's motion for preliminary injunction.

As set forth in the Plaintiff's brief in support of its motion for preliminary injunction, the last actual, peaceable, uncontested status quo was that the Line 5 dual pipelines were shut down pending an investigation into the newly discovered damage to the pipelines and their infrastructure. (6/22/20 Brief in Support of Motion for Preliminary Injunction, pp 12–13.)

Enbridge's actions of informing the Governor via a letter from its CEO that the pipelines were shut down pending investigation, only to almost immediately resume operation of one leg of the pipelines, demonstrate that its statements to government regulators are, at best, inconsistent with its actions. At worst, they are misleading.

As set forth in the attached affidavit of Daniel Eichinger, the people of the State of Michigan will suffer immediate and irreparable injury, loss, or damage

from the delay required to effect the usual notice provisions required by the Michigan Court Rules. (Ex A, ¶¶ 5–11.) Specifically, Enbridge has already reactivated one leg of the Line 5 pipelines, in apparent contradiction of its formal letter to the Governor issued earlier the same day. (Ex A, ¶ 6; Exs B and C to Plaintiff’s 6/22/20 Brief in Support of Motion for Preliminary Injunction.) This decision to reactivate the west leg was made without first providing the information Enbridge was legally required to provide to the State, and without any understanding of the cause of the newly discovered damage to the pipelines and supporting infrastructure. (*Id.*)

The fact that the west leg is operating without the assurance of a full investigation, and without any involvement by State regulators, in and of itself constitutes an immediate and irreparable injury to the people of the State of Michigan. (Ex A, ¶¶ 7–8.) The people of the State have an interest in ensuring that privately owned infrastructure that threatens the Great Lakes is operated in a reasonably prudent and legal manner, complete with appropriate government oversight. By shirking its legal obligations to share information with the State, Enbridge has irreparably harmed the people by denying their ability to oversee Enbridge’s operations on public trust bottomlands and protect the Great Lakes.

Additionally, given Enbridge’s cavalier attitude toward the risk its pipelines pose to the Great Lakes, and its indifferent response to its legal obligations and the reasonable requests of State government officials, there is no reason to believe that Enbridge will consult State officials before it reactivates the east leg of the

pipelines. After all, that is exactly what it did with the west leg as recently as Saturday, June 20, 2020. (Ex A, ¶¶ 6–10.) This would constitute a second immediate and irreparable injury that cannot be avoided absent the issuance of a temporary restraining order.

Finally, there is a far graver risk of irreparable harm: the risk of a release of oil from the Line 5 pipelines into the waters of the Straits of Mackinac. (Ex A, ¶ 11; 6/22/20 Brief in Support of Motion for Preliminary Injunction, pp 11–12, 13, and 14.)

### CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, the Attorney General respectfully requests that this Court enter a temporary restraining order enjoining the operation of the Line 5 dual pipelines in the Straits of Mackinac until such time as the Court can rule on the Plaintiff’s motion for preliminary injunction.

Respectfully submitted,

Dana Nessel  
Attorney General

/s/ Daniel P. Bock  
S. Peter Manning (P45719)  
Robert P. Reichel (P31878)  
Daniel P. Bock (P71246)  
Charles A. Cavanagh (P79171)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Environment, Natural Resources,  
and Agriculture Division  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-7664

Dated: June 22, 2020

# EXHIBIT A

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, ON BEHALF  
OF THE PEOPLE OF THE STATE OF  
MICHIGAN,

Plaintiff,

v

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP; ENBRIDGE ENERGY  
COMPANY, INC.; and ENBRIDGE ENERGY  
PARTNERS, L.P.,

Defendants.

No. 19-474-CE

HON. JAMES S. JAMO

**AFFIDAVIT OF DANIEL  
EICHINGER**

---

S. Peter Manning (P45719)  
Robert P. Reichel (P31878)  
Daniel P. Bock (P71246)  
Charles A. Cavanagh (P79171)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Environment, Natural Resources, and  
Agriculture Division  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-7664

Peter H. Ellsworth (P23657)  
Jeffery V. Stuckey (P34648)  
Ryan M. Shannon (P74535)  
Dickinson Wright PLLC  
Attorneys for Defendants  
215 South Washington Square  
Suite 200  
Lansing, MI 48933  
(517) 371-1730

---

David H. Coburn (pro hac vice)  
William T. Hassler (pro hac vice)  
Alice Loughran (pro hac vice)  
Joshua Runyan (pro hac vice)  
Steptoe & Johnson LLP  
Attorneys for Defendants  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

Phillip J. DeRosier (P55595)  
Attorney for Defendants  
500 Woodward Avenue  
Suite 4000  
Detroit, MI 48226  
(313) 223-3866

---

**AFFIDAVIT OF DANIEL EICHINGER**

STATE OF MICHIGAN )  
  )ss  
COUNTY OF INGHAM )

I, Daniel Eichinger, Director of the Michigan Department of Natural Resources, hereby swear and attest under penalty of perjury as follows:

1. I have been the Director of the Michigan Department of Natural Resources since I was appointed by the Governor on December 27, 2018.
2. I am familiar with the facts underlying this motion, as well as the Plaintiff's motion or preliminary injunction.
3. On Friday, June 19, 2020, I participated in a telephone conference call with representatives of the Defendant Enbridge entities (Enbridge) in which I was informed of the newly discovered damage to the Line 5 dual pipelines and their supporting infrastructure.
4. I have reviewed and am familiar with the correspondence exchanged by the Governor and Enbridge's CEO on Friday, June 19, 2020 and Saturday, June 20, 2020, and Monday, June 22, 2020.
5. My understanding, based on my conversations with Enbridge representatives and my review of the correspondence between the Governor and Enbridge's CEO, was that the Line 5 dual pipelines had been shut down pending an investigation into the newly discovered damage, and I and other state officials expected that Enbridge would provide all information it possessed to the State of Michigan in the timeframe requested by the Governor – specifically, that Enbridge

would provide digital information to the State by Saturday, June 20, 2020, and any remaining information by Monday, June 22, 2020. The digital information was to be provided by email to me and Director Liesl Eichler Clark of the Michigan Department of Environment, Great Lakes, and Energy.

6. I was surprised to learn that Enbridge had reactivated the west leg of the Line 5 dual pipelines on Saturday, June 20, 2020, not long after informing the Governor that the pipelines were shut down pending an investigation.

7. In addition to unilaterally reactivating the west leg of the Line 5 dual pipelines without consultation or apparent consideration of the Governor's request, Enbridge has, to my knowledge, only provided two engineering reports that summarize Enbridge's information and conclusions. These reports total nine pages in length, and do not include all of the information requested by the Governor, including the underlying data that went into those reports or any video footage.

8. By reactivating the west leg of the Line 5 dual pipelines shortly after assuring the Governor that the pipelines were shut down, without consulting or sharing information with State government officials, Enbridge prevented DNR, EGLE, and other state departments from ensuring that the Great Lakes would not be threatened by this partial reactivation of the pipelines.

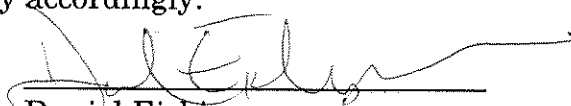
9. Given Enbridge's unilateral decision to reactivate the west leg of the Line 5 dual pipelines, I am not confident that Enbridge will provide the state with all of the information and meaningfully consult with relevant state agencies before it reactivates the east leg of the pipelines.



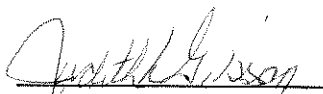
10. Should Enbridge reactivate the east leg of the Line 5 dual pipelines without first providing all relevant information in its possession to the State of Michigan, and allowing the State to review that information and confirm that it would be reasonably prudent to reactivate the pipelines, DNR, EGLE, and other state departments would be prevented from exercising their legal right to receive information from Enbridge that will allow them to ensure that the pipelines are operated in accordance with the terms of the 1953 Easement Agreement and Michigan law.

11. Finally, should Enbridge err in its conclusion that it is prudent to reactivate the Line 5 dual pipelines, and should that reactivation cause a release from the pipelines into the waters of the Straits of Mackinac, this would constitute a grave and irreparable injury to the Great Lakes and to the public trust in those waters.

12. I have personal knowledge of the facts stated in this affidavit and, if called as a witness, I am competent to testify accordingly.

  
Daniel Eichinger  
Director, Michigan Department of  
Natural Resources

Subscribed and sworn to before me  
this 22nd day of June, 2020

, Notary Public  
Judith L. Gibson  
Ingham County, Michigan  
Acting in and for Ingham County  
My Commission Expires: 01/10/2025

JUDITH L. GIBSON  
NOTARY PUBLIC-STATE OF MICHIGAN  
COUNTY OF INGHAM  
My Commission Expires January 10, 2025  
Acting in the County of Ingham