

## **Written Evidence of Grand River Indigenous Solidarity,**

**1.** Grand River Indigenous Solidarity (GRIS) is a collective of settlers working towards decolonization. We are based in and primarily focus our work within the Six Nations of the Grand River territory. Our organizing is guided by the Two Row Wampum and a framework of coexistence based on autonomy and non-interference. We support Indigenous self-determination, and challenge the historical and ongoing oppression/dispossession of Indigenous peoples and their lands.

We note several issues with this project proposal and members of our collective have arranged evidence regarding these issues. The failure of Enbridge (and the Federal and Provincial governments) to meaningfully and respectfully consult with the 17 Indigenous communities whose territories the pipeline crosses is paramount. The disrespect and/or non-acknowledgement of treaty responsibilities on the part of Enbridge, is compounded by Enbridge's negligent safety record when it comes to keeping the pipelines from rupturing or leaking and the inability of the company to adequately clean up the products they are transporting after the inevitable ecosystem contamination due to pipeline system failure.

**2.** Several members of GRIS have lived on the Grand River Territory for their entire lives, while others have more recently moved here. We all, however, acknowledge our responsibility as settlers to the agreements made with the Indigenous peoples whose territory we live on. Accordingly, we hold that the decision regarding the pipeline can not in good faith be made without the full collaboration and inclusion of the Indigenous peoples whose land Line 9 crosses and whose communities and cultures will be impacted when the pipeline breaks.

The Two Row Wampum provides a clear path for Indigenous and non-Indigenous peoples to follow and the Haldimand Proclamation, along with several treaties, guarantees the Grand River Watershed for the Haudenosaunee -- unimpacted by settler activity. It is our responsibility to ensure that the Canadian government and the processes and projects it undertakes and allows, respect the historical agreements made between the colonial governments and the Indigenous nations whose land we have settled upon. Further we understand our own reliance on the lands on which we live and will act to protect this watershed from dangerous resource development projects. Members of the GRIS collective have relevant expertise through academic pursuits and life experience.

### **3. Existing Treaties and Agreements**

The decisions regarding Line 9 reversal and changes to the pipeline's contents are

being made in direct contravention to existing treaties (not all listed) with Indigenous nations and to the Canadian charter. There are also several ongoing land claims which other intervenors are focussing on.

Some quotes from Enbridge's responses to Jesse McCormicks information requests:

- "Enbridge has not reviewed any treaties as a result of the Project"
- "The scope and location of the work associated with the Project is not anticipated to affect any aboriginal groups, nor to affect the exercising of aboriginal or treaty rights"
- "Enbridge has not been made aware of any First Nations' land claims in relation to existing treaties and agreements that may relate to the lands in the Project area."

**3.1 Two Row agreement (1613 with the Dutch, and 1664 with the British)** - A non-interference agreement based on Peace, Respect, and Friendship where settler societies and the Haudenosaunee can co-exist on the same landmass without infringing on the cultural and societal practices of each other. Requires consultation and FPIC.

**3.2 Nanfan Treaty (1701)** - This guarantees the ability for the Haudenosaunee to hunt on a vast swath of territory including the Grand River watershed and other areas traversed by Line 9. Requires consultation and FPIC.

**3.3 Haldimand Proclamation (1784)** - We also note that the Haldimand proclamation is not being honoured. Requires consultation and FPIC.

3.3.1 Haldimand Tract: Comprising six miles on each side of the Grand River from source to finish, this land was promised to the Mohawks of the Haudenosaunee Confederacy for their role as military allies to the British in the War of 1812, which cost them their traditional territory in present-day New York State. Since then, settler society has encroached onto the Haldimand Tract with deceitful promises, disrespected agreements, and broken treaties. For example, money that was put "in trust" for the Haudenosaunee after several lease agreements and land sales (including present day Waterloo region /Block 2), was pilfered to fund further colonial projects, such as the Welland Canal and McGill University. Other areas of land were simply taken without pretense or consent.

This history of theft and appropriation is well-documented, so we can learn how our cities and schools were built upon stolen land. To this day, promises made by the settler governments of Britain and Canada remain unfulfilled, violated, and/or broken. Line 9 crosses Block 1 of the Haldimand Tract.

**3.4 Royal Proclamation (1763)** - The Royal Proclamation is a document that set out guidelines for European settlement of Aboriginal territories in what is now North America. the Royal Proclamation explicitly states that [Aboriginal title](#)

has existed and continues to exist, and that all land would be considered Aboriginal land until ceded by treaty. The Proclamation forbade settlers from claiming land from the Aboriginal occupants, unless it has been first bought by the Crown and then sold to the settlers. The Royal Proclamation further sets out that only the Crown can buy land from First Nations.

**3.5 Canadian charter (1982)**, - Under Section 35 the existing treaty rights of the Indigenous peoples of Canada are recognized and affirmed, effectively reaffirming the Royal Proclamation of 1763 in the process. With non-compliance of the above treaties and agreements, Enbridge corp, and the Crown are in contravention of the Charter. Requires consultation and FPIC.

### **3.6 United Nations Declaration of the Rights of Indigenous Peoples (2011)**

Our research indicates that Enbridge and the Crown has failed to seek, nor have they shown evidence that they have gained free, prior, and informed consent for this project from the Haudenosaunee, and other Indigenous peoples impacted by this project. This conclusion is made while noting that in the least, articles:

3 - Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Enbridge has admitted that the pipeline is incompatible with traditional Indigenous values.

5 - Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. Free Prior and informed consent is paramount here.

11(1) - Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. A pipeline rupture could make the possibility of some revitalization impossible.

18 - Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

19 - States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting

and implementing legislative or administrative measures that may affect them.

26 - 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

27 - States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

28 - 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

29 - 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the

peoples affected by such materials, are duly implemented.

31 - 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

32 - 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact

39 - Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration. What benefits are afforded to the Indigenous people impacted by the pipelines?

of the UN Declaration on the Rights of Indigenous Peoples (of which Canada is a signatory). The basic principles requiring Free, Prior, and Informed Consent have not been fulfilled.

#### **4. Consultation, not Notification**

In reading the response to our questions regarding consultation ([A3I6S3 - Attachment 1 to Grand River Indigenous Solidarity IR 1.b](#)), it is quite clear that Enbridge does not differentiate between a processes of consultation (which they are required to do), and the process of notification (which is what they do). Informing an impacted party of your plans for a project and asking them if they have any concerns or questions is not consulting in good faith. Additionally, the failure of the crown in upholding the duty to consult and their other treaty and declaration/proclamation responsibilities, does not excuse Enbridge from

undertaking a proper process where free, prior, and informed consent is respected.

Additionally, the affected First Nations bands councils and traditional councils have their own processes and protocols for consultations. These processes need to be respected and adhered to by Enbridge and the Crown, not modified to fit the production schedules or election timelines of corporations and the Crown.

Finally, FPIC includes the option of saying “no” and with Enbridge indicating that Line 9 is not compatible with traditional Indigenous use, the no option must be on the table. It should also be noted that consent requires a “yes”, and thus far, we have only found statements of non-support and/or questions/concerns raised by the Haudenosaunee groups Enbridge gave notification about the project to and others who have legitimate say on the matter but were not contacted by Enbridge.

#### **5. Allowing diluted bitumen to flow through the reversed Line 9 poses dire ecological threats along the line, including in the Grand River Watershed.**

The pipeline poses a risk not only to the land directly adjacent to its course, but to entire watersheds and ecosystems connected to this land. A rupture in the pipeline would be devastating to everything downstream and everything and everyone that relies on the water and the land. Additionally the numerous wells located near pumping stations--where most spills occur--would be unusable in the event of a spill.

The course of Line 9 is surrounded by some of the richest farmland in the country. Recognising the risks posed by dilbit, many farmers, including the National Farmers' Union-Ontario and the Ecological Farmers of Ontario have indicated their concern about and opposition to the project. In the event of a spill, their land and farming operations would be severely compromised for multiple years. Enbridge has not articulated a plan to compensate for the loss of local food production that would result, or to detoxify the water. In the intervening years between a spill and “clean up,” a delay evident from the process in Kalamazoo, MI, additional water and food to supplant what is lost would be required. Enbridge does not have a plan to compensate for the water that could not be locally sourced. Further, such a requirement is in itself unsustainable; being able to be sustained by the watershed where we live is paramount for going into the future with healthy, resilient communities, and using another watershed's resources while we “clean up” ours after dilbit contamination is simply unacceptable.

#### **6. The transport of diluted bitumen of fracked oil, alongside the age and integrity of the pipeline, poses a serious threat of toxic spills, the impact of which would extend over generations.**

Two products Enbridge has admitted the pipeline will carry is fracked oil from the Bakken fields and tar sands dilbit from Alberta. The former source is

major point of protest in the US where the extraction is causing environmental damage and Quebec, where decades of protest have been rekindled after a small town was recently destroyed by a train carrying the fracked oil.

The tar sands developments are also in contravention with many of Canada's treaty responsibilities, and is the single largest point emitter of greenhouse gases in Canada. The high resistance to flow exhibited by tar sands crude necessitates the addition of many toxins for transport. This toxic slurry, being pumped at high pressure and temperature has been found to be especially corrosive to pipelines, especially those that were not built with such products in mind (or existence).

Finally, this project further entrenches Ontario in the unsustainable carbon economy which is driving hard to predict climatic changes and instability.

### **7. Similarities to Line 6b rupture (2010):**

In July 2010, the Enbridge Line 6B, a pipeline very similar in make and age to line 9, ruptured. Enbridge failed to act on the pipeline break for 17 hours, in which time, 50+ km of the Kalamazoo river in Michigan was devastated by tar sands diluted bitumen. The direction of product flow in Line 6b was recently reversed so it could carry tar sands crude. Prior to the pipeline failure the amount of crude flowing through the pipeline was increased as was the pressure of flow.

The US National Transportation Safety Board (NTSB) [slammed](#) Enbridge's safety procedures in regards to the pipeline operation and the "clean-up" of the toxins is an ongoing project which will cost more than 1 billion dollars. It is clear Enbridge has no effective way to clean up diluted bitumen once it enters an environment outside a pipeline. The health impacts on residents along the river continue to unfold.

Importantly, "cleaning up" the dilbit by dredging the river is far from restoring the environment. The removal of oil does not replace the plants and wildlife impacted by its presence, and the disturbance to the river caused by the clean-up cannot be discounted.

### **8. Similarities to Pegasus rupture (2013):**

While not an Enbridge pipe, another prime example of the danger associated with reversing a pipeline, increasing the pressure in the pipe, increasing the amount of product being shipped, and pumping diluted bitumen through the pipeline can be found in the March 2013 pipeline rupture in Mayflower Arkansas. Here Exxon is still dealing with the disaster which has left one neighbourhood unlivable and led to the contamination of a watershed. "Clean-up" efforts here included complete removal of all vegetation and soil to be dumped elsewhere, and waterways continue to show contamination. The 20 inch "Pegasus" pipeline was newer than Line 9 and was also not built to transport heavy tar sands crude or dilbit.

## 9. Enbridge Safety Record

And a quick list of notable Enbridge safety incidents:

- 800 significant spills in last 15 years.
- Enbridge has stated their slow ability to detect pinhole leaks in their pipes.
- Most pumping stations lack emergency shutoff system .
- It took Enbridge 17 hours to detect break on Line 6b.
- Even under ideal circumstances, Enbridge's response time to a pipeline rupture is too slow to contain extensive environmental contamination.
- During the April 2013 flooding in Alberta, Line 37, a pipeline built in 2006 ruptured and contaminated a large swath of surrounding land. Enbridge blamed the heavy rains for causing the ground to shift. Unpredictable and unstable weather and climatic patterns are a result of the carbon economy that projects like the Line 9 reversal continue to expand. What happens when "too much rain" falls on grounds around Line 9?

### Select References:

Canadian Charter:

<http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Analysis Canadian Charter Section 35:

<http://indigenousfoundations.arts.ubc.ca/?id=1050>

UN Declaration on the Rights of Indigenous Peoples:

<http://undesadspd.org/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx>

Two Row Wampum:

<http://honorhetworow.org/learn-more/history/>  
[http://www.onondaganation.org/culture/wpm\\_tworow.html](http://www.onondaganation.org/culture/wpm_tworow.html)

Royal Proclamation:

<http://indigenousfoundations.arts.ubc.ca/home/government-policy/royal-proclamation-1763.html>

Haldimand Proclamation:

<http://www.sixnations.ca/LandsResources/HaldProc.htm>

Environmental Defense Reports on Line 9:

<http://environmentaldefence.ca/issues/tar-sands/line-9>

HDI Letter of concern:

<http://peopleshearing2012.wordpress.com/2012/05/13/hdi/>

Mohawk Workers Letter of concern:

<http://mohawkworkers.files.wordpress.com/2013/06/2013-june-18-ka-nyen-geh-ha-kah->



[of-grand-river-mohawk-workers-statement.jpg](#)

<http://mohawkworkers.wordpress.com/2013/06/19/statement-of-ka-nyen-geh-ha-kah-of-grand-river-mohawk-workers-re-enbridge-line-9-and-peace-talks/>

Oneida Nation letter of Concern:

<http://peopleshearing2012.files.wordpress.com/2012/05/oneida-letterofcomment.pdf>

Global Solutions:

<http://www.sixnations.ca/SNGLobalSolutions-Web.pdf>

<http://www.sixnations.ca/SNGLobalSolutions-ClaimSummaries-web.pdf>

Intervenor Information Requests and Responses:

[https://www.neb-one.gc.ca/ll-eng/livmlink.exe?](https://www.neb-one.gc.ca/ll-eng/livmlink.exe?func=ll&objId=965100&objAction=browse)

[func=ll&objId=965100&objAction=browse](https://www.neb-one.gc.ca/ll-eng/livmlink.exe?func=ll&objId=964209&objAction=browse)

[https://www.neb-one.gc.ca/ll-eng/livmlink.exe?](https://www.neb-one.gc.ca/ll-eng/livmlink.exe?func=ll&objId=964209&objAction=browse)

[func=ll&objId=964209&objAction=browse](https://www.neb-one.gc.ca/ll-eng/livmlink.exe?func=ll&objId=964899&objAction=browse)

[https://www.neb-one.gc.ca/ll-eng/livmlink.exe?](https://www.neb-one.gc.ca/ll-eng/livmlink.exe?func=ll&objId=964899&objAction=browse)

[func=ll&objId=964899&objAction=browse](https://www.neb-one.gc.ca/ll-eng/livmlink.exe?func=ll&objId=964899&objAction=browse)

Line 6b Kalamazoo rupture:

<http://www.epa.gov/enbridgespill/community.html>

<http://www.nts.gov/news/2012/120710.html>

[http://wwmt.com/shared/news/features/state/stories/wwmt\\_deq-issues-violation-notice-enbridge-over-livingston-co-facility-2452.shtml](http://wwmt.com/shared/news/features/state/stories/wwmt_deq-issues-violation-notice-enbridge-over-livingston-co-facility-2452.shtml)

Pegasus Mayflower rupture:

<http://www.desmoglob.com/2013/04/01/everything-you-need-know-about-exxon-pegasus-tar-sands-spill>

Grand River Indigenous Solidarity Newsletters:

<http://grandrivermc.ca/search/node/GRIS>

Other Line 9 Media and Enbridge safety record:

<http://www.tarsandswatch.org/files/Updated%20Enbridge%20Profile.pdf>

<http://www.enbridge.com/MediaCentre/News/Line-37.aspx>

<http://offislandgazette.com/news/story/2013/07/03/regional-government-presents-requests-questions-to-enbridge-over-pipeline/>

<http://www.flamboroughreview.com/news/enbridge-missing-permits-for-westover-site/>

<http://www.newsocialist.org/673-mobilizing-against-tar-sands-pipelines-in-ontario-an-interview-with-john-riddell>

<http://swampline9.tumblr.com>

<http://rabble.ca/news/2012/11/toronto-conference-lays-basis-mass-challenge-tar-sands-pipeline>

<http://rabble.ca/podcasts/shows/awl/2012/12/still-resisting-reversal-stopping-tar-sands-line-9-pipe-ontario>

<http://rabble.ca/podcasts/shows/awl/2013/06/smash-state-report-june-21-2013>

Relevant to the claim that "Enbridge has not been made aware of any First Nations' land claims in relation to existing treaties and agreements that may relate to the lands in the Project area."

The Aamjiwnaang band council brought Enbridge and other companies to court over the tract of land that the west end of the line 9 reversal would begin on. Enbridge was called "Interprovincial Pipe Line Inc" at the time.

This is the Court of Appeal report from the case:

<http://www.usask.ca/nativelaw/factums/view.php?id=99>]

### **Select Glossary:**

**Sovereignty :** Often defined within the confines of Western nation-states – a legal and political definition.

But Indigenous communities have different understandings based on cultural and political traditions, one based within communities themselves and their control - fundamentally Indigenous communities should be considered sovereign entities that have entered into treaty relationships on a 'nation-to-nation' basis with Canada.

**Self-determination:** belief that communities know what is best for them and their peoples and that control of decision-making should be in the hands of those who will feel the impact of the decisions

– in this context Indigenous communities should be free of control by the Canadian state and make their own decisions/priorities without interference.

**Settlers:** (Lawrence and Dua, 2005, 126) need to 'acknowledge that we all share the same land base and yet to question the differential terms on which it is occupied is to become aware of the colonial project that is taking place around us'.

**Solidarity:** The idea that to be in solidarity involves taking direction of sorts from the community one is in solidarity with.

learning from those you are aiming to ally with, figuring out and being attentive to their needs, stepping back and letting that community make decisions for itself, respect decision making process and the fact that you are not part of that community, but are there to assist with their priorities, requires constant an unending process of negotiation and personal critique of the effectiveness of ones actions.

**FPIC:** Free, Prior, and Informed Consent