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## News

# First Nation's Last Chance Appeal Against Line 9 Has Its Day in Ontario Court

The project, which the NEB approved with conditions in February and is now awaiting final approval.

HB By [Hilary Beaumont](#)

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CHIPPEWA OF THE THAMES FIRST NATION BAND COUNCILLOR MYEENGUN HENRY SAYS HE'S FRUSTRATED WITH THE ENTIRE SITUATION. PHOTO BY AUTHOR.

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Tuesday.

While supporters rallied outside the Toronto courthouse, a lawyer for the Chippewa of the Thames First Nation told three appeal judges that the National Energy Board approved Enbridge's Line 9 pipeline expansion without any mandatory consultation from the Crown, despite repeated requests from the First Nation.

But a lawyer for Enbridge said they were "mistaken" about how the process worked.

About 30 members of the First Nation and their supporters filled a Toronto courtroom Tuesday morning while about 50 supporters gathered outside, taking turns on a mic in front of a banner that read: "No consultation, no consent!"

The project, which the NEB approved with conditions in February and is now awaiting final approval, could start up "any day now," Rising Tide Toronto, a group that helped organize the protest, told VICE.

Last month, the First Nation asked the NEB to hit pause on the project, but on June 3 the board denied their request after Enbridge said the stay application was abusive and prejudicial toward the company.

Enbridge's nearly 40-year-old Line 9 pipeline crosses the Thames River, and the company's proposal would repurpose the existing pipeline to carry bitumen eastward from Sarnia, Ontario to Montreal, Quebec.

Enbridge says it submitted its application to repurpose the pipeline and reverse the flow of oil because western Canadian crude oil is now less expensive than foreign oil from areas including West Africa and the Middle East.

ones," including arsenic, lawyer Scott Robertson explained.

The First Nation is concerned there is "an inherent risk of spills" with the pipeline proposal, and bitumen is harder to clean up than the oil the pipeline now carries, he said.

The Chippewa Nation retains the rights to their land, lakes, rivers and air, he said, and they continue to use the land the way their ancestors did. Robertson said: "Simply put, the chiefs of the day never agreed to surrender those rights."

Before the NEB hearing on the pipeline proposal in October 2013, the Chippewa Nation sent a formal request for consultation addressed to Prime Minister Stephen Harper. That was in September 2013.

It wasn't until January 30, 2014, when the NEB proceedings were finished, that they received a letter from the minister of natural resources. The letter said the government would meet its commitment to consult in cases that such a duty exists.

Robertson said the letter didn't address the First Nation's request to meet, and wasn't helpful since it was sent well after the NEB hearing was over.

"With respect, the appellant is mistaken," Enbridge lawyer Douglas Crowther said of the Chippewa of the Thames First Nation interpretation of the duty to consult.

When it comes to consultation, the NEB process is "well suited to that task," he said. The project's environmental impacts will be minimal and are likely to be mitigated, he added.

But Robertson said each party in the process was playing hot potato.

...the Crown, the Supreme Court said, "has a duty to consult with the First Nation, and the two parties are looking at each other."

VICE asked the NEB what exactly the First Nation should have done to trigger consultations with the Crown, but the NEB declined to comment on the court case.

"The Crown, represented by the government of Canada, has a duty to consult with Aboriginal peoples when decisions it makes may impact treaty rights," NEB spokesperson Katherine Murphy wrote in an email to VICE. "The government of Canada has relied on the NEB's hearing processes, to the extent possible, to meet its duty to consult."

When given the chance to respond in court Tuesday, NEB lawyer Rebecca Brown declined to make submissions.

Chippewa of the Thames First Nation band councillor Myeengun Henry told VICE he was frustrated.

"It is very clear that we still haven't been consulted," he said. "...I don't know if that's ever going to happen."

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