

Docket HP14-001
Elizabeth Lone Eagle
Closing Argument
Wednesday, August 5, 2015

Greetings from behind enemy lines.

At the outset of these proceedings last fall, one of the first things that was impressed upon us intervenors was that the burden of proof was on the applicant. As shown by Mr. Capossela, it is incredibly obvious that Trans Canada has not met the burden of proof that they are able, willing and capable of continuing to meet all 50 conditions set forth in their original permit. In fact, what has been shown is the opposite; to the point of violation of the very first condition.

For example, Cory Goulet testified that TransCanada through its tribal relations department utilizes “Community Investment Programs” to develop relationships with Indigenous Nations. Mr. Goulet testified that TransCanada expects “nothing” in return for these programs. However, the very terminology TransCanada uses is an impeachment of Mr. Goulet’s testimony.

Dictionary.com defines “investment” as the investing of money or capital in order to gain profitable returns, as interest, income, or appreciation in value.

MONEY, GAIN and RETURNS are the key words. TransCanada “invests” MONEY in Indigenous Nations, here in South Dakota, specifically Lakota, in order to GAIN something. They expect a RETURN on their investment. Simply because they do not call it a bribe doesn’t mean it isn’t one. This is a clear violation of federal law and as such a violation of Condition 1.

Next, is a question that has been perplexing me since the testimony of Mira Kathari. Why would TransCanada appoint someone with so few qualifications and lack of experience to a position with the responsibility as tremendous as the Keystone XL Pipeline? I listened to Ms. Kathari’s testimony and sat behind the TransCanada legal team and realized that isn’t what they did at all.

Ms. Kathari was not the original engineer for the project. She was brought in later when TransCanada needed a marketable face. I looked around and saw a bunch of old men looking at retirement. They are men whose knowledge and experience could only lead them

to the conclusion that there is something seriously wrong with the Keystone XL Pipeline. Ms. Kathari was tapped to be the lead project engineer because she is young, attractive and does what she is told. Unfortunately she is being groomed to become the scapegoat when the pipeline fails.

The South Dakota Public Utilities Commission has the opportunity to save a career in spite of the overwhelming political pressure from Governor Dugaard, Senator Rounds and others. I realize that with such overwhelming pressure it is difficult to be unbiased, balanced and neutral as demonstrated by the *unsika* case put on by the PUC Staff. TransCanada has lead us all down a path of promises and kept none of them so we all need to find a way out of this.

Once again the *Oceti Sakowin* have risen to the occasion to rescue *Ina Maka* and *Mni Wiconi* from the jaws of the *Uncekila Sapa*. As stated by my *Ate*, John Clifford before this Commission on July 6, 2015:

“While I am here to speak to you, what I am telling you, with the confidence of the Constitution and the force of our Treaty Rights is that: you have no jurisdiction to rule on anything that could potentially affect Indian Land on the Reservation or those lands that are Federal Indian Trust Lands and most certainly not to grant a permit to any entity, foreign or domestic that would encroach in any way by crossing, spilling or causing any disturbance to these lands which afford financial support and homesteads to the Native American Indian Tribal Membership.

Any ruling you make which would have any effect on Indian Lands is in direct violation of Article Six of the U.S. Constitution whereby Treaties are deemed the “*Supreme Law of the Land*” and in particular treaties made with Lakota Nations. Therefore as a member of the Rosebud Sioux Tribe I hereby assert sovereign[ty]... and deem any granting of an easement or permit through my land as null and void and as inherently an unconstitutional invasion of my rights and resources...

Also incumbent upon you, the PUC, is the responsibility to ensure that you avoid the same disastrous results that the oil spills of the Exxon Valdez and the BP Gulf disaster produced. That extensive damage has yet to be adequately cleaned up and the victims to be equitably compensated...

I am holding you accountable for even considering this lawless act of granting a permit to this foreign entity which is using the precious lands and waters of this country to profiteer for themselves and which in the end fail to benefit our country in any significant way.”

In addition to this testimony you have the testimony of two additional experts, Doug Crow Ghost and Wayne Frederick, both of whom have experience working with the Winters Doctrine. The Winters Doctrine acknowledges tribal ownership of the water. When asked whether or not the PUC has the authority to make decisions that will affect water and waterways clearly under the authority of the Standing Rock and Rosebud Sioux Tribes BOTH experts answered NO. The PUC does NOT have the authority to make decisions affecting their water resources. Evidence provided by not only the Tribes, but other intervenors as well, clearly proves Tribal water resources will be affected by the Keystone XL pipeline.

Because TransCanada cannot prove it can meet even the first condition set out in the 50 required by the permit, let alone any of the other 49; coupled with the fact that you have NO AUTHORITY to make ANY decisions regarding Tribal resources, water in particular, you have NO OTHER OPTION than to deny HP14-001.

I conclude with the same statement I made at the outset of this hearing:

Taku ecanub yacib hena oyate tagni okipisniye. These proceedings are illegal.

**Takuwan zuzeca sapa sica iyaub eyacin ca miyeheb wacisni cale ohitika wahinnajin.
My participation in these proceedings in under duress.**

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**Testimony before the South Dakota Public Utilities Commission
 Monday July 6, 2015**

of

**John Paul Clifford, Member of the Rosebud Sioux Tribe, and Owner
 of Trust Land under the Tribal Land Enterprise System**

Ladies and Gentlemen of the Commission,

My name is John Paul Clifford, I am a member of the Rosebud Sioux Tribe, and have come here today because I learned that the land I have in production is located in the Spill Zone of the intended route for the Keystone XL Pipeline. At the very least, I should have been notified that the Trans-Canada pipeline had been intending to cross and create a hazard of incredible proportions to the land. None of us affected in this defined area has had any notice.

While I am here to speak to you, what I am telling you, with the confidence of the Constitution and force of our Treaty Rights, is that: You have no jurisdiction to rule on anything that could potentially affect Indian Land on the Reservation or those lands that are Federal Indian Trust Lands and most certainly not to grant a permit to any corporate entity, foreign or domestic which would encroach in any way by crossing, spilling or causing any disturbance to these lands which afford financial support and homesteads to the Native American Indian Tribal Members.

Any ruling you make which would have any effect on Indian Lands is in direct violation of Article Six of the U. S. Constitution whereby Treaties are deemed the "Supreme Law of the Land" and in particular treaties made with Lakota Nations. Therefore, as a member of the Rosebud Sioux Tribe I hereby assert sovereign immunity and deem any granting of an easement or permit through my land as null and void and as inherently an unconstitutional invasion of my rights and resources.

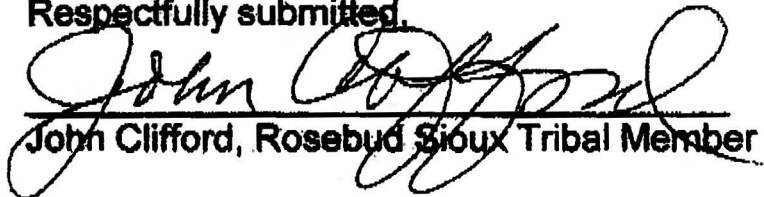
However, even if it were allowable for you to grant the permit, as a citizen of the United States I am entitled, again under the Constitution, to full, equitable, and prompt compensation for any damage sustained and for any loss of income and loss of income producing property. as a result of any government entity's decision by which I am adversely affected. The same applies to all individual property owners adversely affected by your granting of a pipeline permit. It is then incumbent upon you, the PUC, to require of

the grantee adequate and full insurance coverage and bonding not only for me but also for all property owners who sustain similar damage and loss of income. To date you have provided no documentation showing that you are requiring that the grantee is providing full and adequate coverage for those losses and damages sustained by property owners as a result of your decision to grant a permit. Running pipeline protection ads by the grantee is no substitute for bankruptcy-proof insurance coverage and bonding.

Also incumbent upon you, the PUC, is the responsibility to ensure that you avoid the same disastrous results that the oil spills of the Exxon Valdez and the BP Gulf disaster produced. That extensive damage has yet to be adequately cleaned up and the victims to be equitably compensated.

I am holding you accountable for even considering this lawless act of granting a permit to this foreign entity which is using the precious lands and waters of our country to profiteer for themselves and which in the end fail to benefit our country in any significant way. Trans-Canada is sending the oil sands to New Orleans for process and shipment to other countries, The few jobs it produces do not dignify the degradation of our precious resources, land and water,

Respectfully submitted,


John Clifford, Rosebud Sioux Tribal Member