

Black Elk apparently authored and nothing else. The filing was not supported with a statement of Ms. Black Elk, a summary of testimony she purported to give, or anything by way of foundation for the article's admission into evidence. It is apparent that Standing Rock intends to call Ms. Black Elk as a witness in these proceedings, as she is listed as a witness and her article is listed as an exhibit in the Tribe's July 7 witness and exhibit list.

The unsupported April 2 filing of the article "Culturally Important Plants of the Lakota" does not constitute pre-filed testimony in the sense directed by the Commission. It is not testimony and is not directed at any issue in this proceeding. There is no witness statement explaining what the article is, the foundation for its conclusions, how it is relevant to the matters in issue, and how it bears on Applicant's certification application. Accordingly, it does not constitute pre-filed testimony in the sense of the Commission's order or its regulations.

In the form filed, the article is hearsay and without foundation. Hearsay, per the South Dakota rules of evidence, is unsworn out-of-court statements offered for the truth of the matter asserted. *See* SDCL § 19-19-801. Hearsay is not admissible in this proceeding. An article may not be offered as a substitute for the testimony of the author, for the simple reason that the article cannot be cross-examined. Accordingly, it is not admissible as evidence in these proceedings. A learned treatise is admissible into evidence, but only after proper foundation for the article is presented, and then under limited circumstances. *See* SDCL § 19-19-803(18).

The article, while interesting, has no bearing on any issue before the Commission in this proceeding. It purports to identify plants used for food, medicine and other purposes by Lakota, identifies the genus and species and Lakota word(s) for the plants, but describes no locus for the plants, or how the certification of the Applicant's project relates to plants described. The article and its contents simply lack relevance to the matters here in issue.

It is entirely inappropriate to let Ms. Black Elk appear and offer facts, opinions, or give testimony in this proceeding. She has not filed any testimony, the parties have no idea what she may have to say, no discovery has been conducted with respect to anything she might say or opinion she might offer. To allow her to testify, even to lay foundation for the article she authored, corrupts the Commission's order requiring pre-filing of testimony and is unfair to the parties.

For those reasons, Applicant respectfully requests the Commission enter its order prohibiting Ms. Black Elk from testifying in the hearing on Applicant's Certification Petition and striking the article "Culturally Important Plants of the Lakota" from the record.

Dated this 10th day of July, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

James E. Moore
PO Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
Phone (605) 336-3890
Fax (605) 339-3357
Email James.Moore@woodsfuller.com

- and -

William Taylor
2921 E. 57th Street, #10
Sioux Falls, SD 57108
Phone 605-212-1750
Bill.Taylor@williamgtaylor.com

Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Motion in Limine to Strike the Article by Linda Black Elk and Restrict Her Testimony following:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
patty.vangerpen@state.sd.us

Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
kristen.edwards@state.sd.us

Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
brian.rounds@state.sd.us

Darren Kearney
Staff Analyst South Dakota Public Utilities
Commission
500 E. Capitol Avenue
Pierre, SD 57501
darren.kearney@state.sd.us

Tony Rogers, Director
Rosebud Sioux Tribe - Tribal Utility
Commission
153 South Main Street
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Cindy Myers, R.N.
PO Box 104
Stuart, NE 68780
csmyers77@hotmail.com

Jane Kleeb
1010 North Denver Avenue
Hastings, NE 68901
jane@boldnebraska.org

Byron T. Steskal
Diana L. Steskal
707 E. 2nd Street
Stuart, NE 68780
prairierose@nntc.net

Terry Frisch
Cheryl Frisch
47591 875th Road
Atkinson, NE 68713
tcfrisch@q.com

Arthur R. Tanderup
52343 857th Road
Neligh, NE 68756
atanderu@gmail.com

Lewis GrassRope
PO Box 61
Lower Brule, SD 57548
wisestar8@msn.com

Carolyn P. Smith
305 N. 3rd Street
Plainview, NE 68769
peachie_1234@yahoo.com

Robert G. Allpress
46165 Badger Road
Naper, NE 68755
bobandnan2008@hotmail.com

Amy Schaffer
PO Box 114
Louisville, NE 68037
amyanschaffer@gmail.com

Benjamin D. Gotschall
6505 W. Davey Road
Raymond, NE 68428
ben@boldnebraska.org

Elizabeth Lone Eagle
PO Box 160
Howes, SD 57748
bethbest@gmail.com

John H. Harter
28125 307th Avenue
Winner, SD 57580
johnharter11@yahoo.com

Peter Capossela
Peter Capossela, P.C.
Representing Standing Rock Sioux Tribe
PO Box 10643
Eugene, OR 97440
pcapossela@nu-world.com

Travis Clark
Fredericks Peebles & Morgan LLP
Suite 104, 910 5th St.
Rapid City, SD 57701
tclark@ndnlaw.com

Jerry P. Jones
22584 US Hwy 14
Midland, SD 57552

Debbie J. Trapp
24952 US Hwy 14
Midland, SD 57552
mtdt@goldenwest.net

Louis T. (Tom) Genung
902 E. 7th Street
Hastings, NE 68901
tg64152@windstream.net

Nancy Hilding
6300 West Elm
Black Hawk, SD 57718
nhilshat@rapidnet.com

Paul F. Seamans
27893 249th Street
Draper, SD 57531
jacknife@goldenwest.net

Viola Waln
PO Box 937
Rosebud, SD 57570
walnranh@goldenwest.net

Wrexie Lainson Bardaglio
9748 Arden Road
Trumansburg, NY 14886
wrexie.bardaglio@gmail.com

Harold C. Frazier
Chairman, Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625
haroldcfrazier@yahoo.com
mailto:kevinckeckler@yahoo.com

Cody Jones
21648 US Hwy 14/63
Midland, SD 57552

Gena M. Parkhurst
2825 Minnewsta Place
Rapid City, SD 57702
GMP66@hotmail.com

Jennifer S. Baker
Representing Yankton Sioux Tribe
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
jbaker@ndnlaw.com

Duncan Meisel
350.org
20 Jay St., #1010
Brooklyn, NY 11201
duncan@350.org

Bruce Ellison
Attorney for Dakota Rural Action
518 6th Street #6
Rapid City, SD 57701
belli4law@aol.com

RoxAnn Boettcher
Boettcher Organics
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Bonny Kilmurry
47798 888 Road
Atkinson, NE 68713
bjkilmurry@gmail.com

Robert P. Gough, Secretary
Intertribal Council on Utility Policy
PO Box 25
Rosebud, SD 57570
bobgough@intertribalCOUP.org

Dallas Goldtooth
38731 Res Hwy 1
Morton, MN 56270
goldtoothdallas@gmail.com

Joye Braun
PO Box 484
Eagle Butte, SD 57625
jmbraun57625@gmail.com

The Yankton Sioux Tribe
Robert Flying Hawk, Chairman
PO Box 1153
Wagner, SD 57380
robertflyinghawk@gmail.com
Thomasina Real Bird
Attorney for Yankton Sioux Tribe
trealbird@ndnlaw.com

Chastity Jewett
1321 Woodridge Drive
Rapid City, SD 57701
chasjewett@gmail.com

Bruce Boettcher
Boettcher Organics
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Ronald Fees
17401 Fox Ridge Road
Opal, SD 57758

Tom BK Goldtooth
Indigenous Environmental Network (IEN)
PO Box 485
Bemidji, MN 56619
ien@igc.org

Gary F. Dorr
27853 292nd
Winner, SD 57580
gfdorr@gmail.com

William Kindle, President
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 575
William.Kindle@rst-nsn.gov
ejantoine@hotmail.com

Thomasina Real Bird
Representing Yankton Sioux Tribe
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
trealbird@ndnlaw.com

Frank James
Dakota Rural Action
PO Box 549
Brookings, SD 57006
fejames@dakotarural.org

Tracey A. Zephier
Attorney for Cheyenne River Sioux Tribe
Fredericks Peebles & Morgan LLP
910 5th Street, Suite 104
Rapid City, SD 57701
tzephier@ndnlaw.com

Matthew Rappold
Rappold Law Office
on behalf of Rosebud Sioux Tribe
PO Box 873
Rapid City, SD 57709
matt.rappold01@gmail.com

Kimberly E. Craven
3560 Catalpa Way
Boulder, CO 80304
kimecraven@gmail.com

Mary Turgeon Wynne
Rosebud Sioux Tribe - Tribal Utility
Commission
153 S. Main Street
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Paula Antoine
Sicangu Oyate Land Office Coordinator
Rosebud Sioux Tribe
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net
paula.antoine@rosebudsiouxtribe-nsn.gov

Sabrina King
Dakota Rural Action
518 Sixth Street, #6
Rapid City, SD 57701
sabinra@dakotarural.org

Robin S. Martinez
Dakota Rural Action
Martinez Madrigal & Machicao, LLC
616 West 26th Street
Kansas City, MO 64108
robin.martinez@martinezlaw.net

Paul C. Blackburn
4145 20th Avenue South
Minneapolis, MN 55407
paul@paulblackburn.net

April D. McCart
Representing Dakota Rural Action
Certified Paralegal
Martinez Madrigal & Machicao, LLC
616 W. 26th Street
Kansas City, MO 64108
april.mccart@martinezlaw.net

Joy Lashley
Administrative Assistant
SD Public Utilities Commission
joy.lashley@state.sd.us

Eric Antoine
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 57570
ejantoine@hotmail.com

/s/ James E. Moore
One of the attorneys for TransCanada