STATE OF SOUTH DAKOTA	**)**	**IN THE CIRCUIT COURT**
	:SS	
COUNTY OF HUGHES	**)**	**SIXTH JUDICIAL CIRCUIT**

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	*	CIV NO. 16-33
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IN THE MATTER OF PUBLIC UTILITIES COMMISSION DOCKET NO. HP14-001, TRANSCANADA KEYSTONE PIPELINE, LP	*	**YANKTON SIOUX TRIBE'S REPLY BRIEF**
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COMES NOW Yankton Sioux Tribe ("Yankton" or the "Tribe"), by and through its counsel Thomasina Real Bird and Jennifer S. Baker (Fredericks Peebles & Morgan LLP), and hereby submits the following as its reply brief.

I. PROCEDURAL ISSUES

A. THE COMMISSION ERRED BY DENYING YANKTON'S DECEMBER 2, 2014 MOTION TO DISMISS, BY DENYING THE *JOINT MOTION* IN LIMINE, AND BY TAKING INCONSISTENT POSITIONS WITH REGARD TO THE TRACKING TABLE OF CHANGES.

The Commission committed reversible error, and denied Yankton due process, when it denied Yankton's December 2, 2014 *Motion to Dismiss*, when it denied the *Joint Motion* in Limine, and when it repeatedly took inconsistent positions with regard to TransCanada Keystone Pipeline LP's ("Keystone") "Tracking Table of Changes." The Tracking Table of Changes, included as Keystone's Appendix C to its petition, identifies thirty different ways in which the project that was the subject of the 2010 permit differs from the project that was the subject of the 2014 petition and this appeal. The whole purpose of the Tracking Table of Changes is to point out these differences. The differences Keystone identified in the Tracking Table of Changes are changes to the project from what the Commission relied on when it issued its 2010 ruling and granted the permit. The

permit is therefore contingent on the project meeting the specifications it met when the original permit application was submitted. Because the current project no longer meets the specifications of the originally permitted project, the Commission should have granted Yankton's *Motion to Dismiss* and the *Joint Motion* in Limine.

B. THE COMMISSION ABUSED ITS DISCRETION BY REQUIRING PRE-FILED TESTIMONY UNDER ARSD 20:10:01:22:06 AND PRECLUDING TESTIMONY THAT WAS NOT PRE-FILED.

The Commission erred by requiring the parties to submit pre-filed testimony before the hearing and by precluding testimony that had not been pre-filed. A.R.S.D. 20:10:01:22.06 states: "When ordered by the commission in a particular proceeding, testimony and exhibits shall be prepared in written form, filed with the commission, and served on all parties prior to the commencement of hearing on such dates as the commission prescribes by order." S.D. Admin. R. 20:10:01:22.06 (2016). In order to require parties to submit pre-filed testimony, the Commission must issue an order requiring pre-filed testimony. The Commission issued no such order, and thus violated its own regulations. The Commission committed prejudicial error in that it forced Yankton to submit pre-filed testimony in violation of ARSD 20:10:01:22.06.

Moreover, the Commission's requirement of pre-filed testimony prejudiced Yankton in that the tight time-frame to review discovery and submit witness testimony damaged Yankton's ability to digest the information produced and adequately prepare its witnesses. Although Yankton was able to submit pre-filed testimony, Yankton was restricted in the amount of testimony that it could pre-file due to the limited window to submit this testimony. Yankton did not have an adequate opportunity to review and organize discovery responses and also contemporaneously prepare and submit pre-filed testimony. This prejudiced Yankton's ability to ultimately prepare and submit a complete set of pre-filed testimony. Thus, the Commission erred by requiring pre-filed testimony to be on file as a prerequisite to presenting testimony at the evidentiary hearing.

C. THE COMMISSION ERRED BY UNLAWFULLY LIMITING THE SCOPE OF DISCOVERY THROUGH ITS DECEMBER 7, 2014 *ORDER GRANTING MOTION TO DEFINE ISSUES AND SETTING PROCEDURAL SCHEDULE.*

The Commission committed prejudicial error when it granted Keystone's *Motion to Define the Scope of Discovery Under SDCL 49-41B-27* because granting Keystone's motion unnecessarily and improperly narrowed the scope of discovery to only two substantive issues: 1) whether the proposed project continued to meet the conditions in the amended final decision and order dated June 29, 2010; and 2) the changes to the findings of fact identified in Keystone's tracking table of changes. By limiting discovery to only these two issues, the Commission effectively undermined Yankton's ability to question Keystone and obtain relevant information through discovery. This narrow scope of discovery, issued at the initial stages of this case before the Parties could substantially uncover and explore the case's factual boundaries, hamstrung the Tribe's efforts to probe for relevant information.

ARSD 20:10:01:01.02 explicitly provides that: "Except to the extent a provision is not appropriately applied to an agency proceeding or is in conflict with SDCL chapter 1-26, another statute governing the proceeding, or the commission's rules, the rules of civil procedure as used in the circuit courts of this state shall apply." S.D. Admin. R. 20:10:01:01.02 (2016). Under SDCL 15-6-26(b)(1), the scope of pretrial discovery is broadly construed. *Kaarup v. St. Paul Fire & Marine Ins. Co.*, 436 N.W.2d 17, 19 (S.D. 1989). SDCL 15-6-26(b) provides that,

> [p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

S.D. Codified Laws § 15-6-26(b)(1)(2016). All relevant matters are discoverable unless privileged. *Kaarup*, 436 N.W.2d at 20.

By impermissibly limiting the scope of discovery to two narrow issues, the Commission prejudiced the Tribe's ability to properly conduct discovery under SDCL 15-6-26(b)(1). Although the Tribe participated in the evidentiary proceedings and presented testimony, it did so while operating within this restricted scope of discovery. The inability to probe for relevant facts beyond the two issues that the Commission sanctioned directly impacted and limited the Tribe's ability to effectively participate in these proceedings. Accordingly, the Commission abused its discretion and prejudiced the Tribe by limiting discovery at the outset of the case.

II. BURDEN OF PROOF AND SUBSTANTIVE EVIDENCE

A. THE COMMISSION ERRED IN ITS *FINAL DECISION* BY PLACING THE BURDEN OF PROOF ON THE INTERVENING PARTIES RATHER THAN ON KEYSTONE, AND BY CONCLUDING THAT THE INTERVENING PARTIES FAILED TO ESTABLISH ANY REASON WHY KEYSTONE CANNOT CONTINUE TO MEET THE CONDITIONS ON WHICH THE PERMIT WAS ISSUED.

The Commission erroneously shifted Keystone's burden of proof under SDCL § 49-41B-27. According to ARSD 20:10:01:15.01, in a contested case proceeding such as HP14-001, the "petitioner has the burden of proof going forward with presentation of evidence unless otherwise ordered by the commission." Under SDCL § 15-6-56(e), "once the moving party meets its initial burden of proof, the burden shifts to the non-moving party to identify facts disputing the moving party's allegations." Because Keystone did not meet its initial burden of proof, as explained below, the burden could not be shifted to the Tribe. The Commission, however, as explained further in the Tribe's *Opening Brief*, frequently put the burden on the Tribe to show that Keystone did not satisfy certain conditions. In doing so, the Commission committed reversible error.

B. THE COMMISSION ERRED IN ITS *FINAL DECISION*, FINDINGS OF FACT, BY FINDING THAT KEYSTONE CERTIFIED THAT IT REMAINS ELIGIBLE TO CONSTRUCT THE PROJECT UNDER THE TERMS OF THE 2010 PERMIT AND THAT KEYSTONE MET ITS BURDEN OF PROOF THROUGH MERELY SUBMITTING A SIGNED CERTIFICATION.

Keystone did not satisfy its initial burden of production in properly certifying that it continued to meet the 50 conditions upon which the permit was initially granted. While an agency's interpretation of a statute it administers is given deference, and must be upheld if reasonable, the Commission's interpretation here is not a reasonable one.

SDCL § 49-41B-27 requires that, construction has not commenced after four years, "the utility must certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued." This requirement is meant to guarantee that the Commission's conditions, crucial to ensuring that the requirements of SDCL § 49-41B-22 are met, continue to be fulfilled four years after the Commission's initial permit approval. The Commission argues that "Keystone met its burden under the statute by filing with the Commission the Certification." Commission's Reply Brief at 18.

"Certify," however, means more than simply filing a document claiming to meet the statutory burden. Words "used [in the South Dakota Codified Laws] are to be understood in their ordinary sense." SDCL § 2-14-1. "Certify" means "to authenticate or verify in writing." Black's Law Dictionary at 275 (10th ed. 2014). *Black's Law Dictionary* defines "verify" as "to prove to be true; to confirm or establish the truth or truthfulness of, to authenticate," and defines "authenticate" in the current context as "to show (something) to be true or real." *Black's Law Dictionary* (14th ed. 2014). Therefore, "to certify" in SDCL 41-41B-27, understood in its ordinary sense, required Keystone to prove it met the 50 conditions the Commission set in 2010.

This is the common understanding of the meaning of "to certify." For example, Federal Rules of Civil Procedure 23(c)(1)(A) requires that "the court must determine by order whether to certify the action as a class action." "[C]ertification is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.'" *Wal-Mart*

Stores, Inc. v. Dukes, 564 U.S. 338, 350-351 (2011), quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982). A judge cannot simply issue an order announcing class certification, he must support his decision with the facts of each case. Similarly, Keystone could not simply file a statement self-declaring certification. Keystone was obligated to demonstrate a rigorous analysis to demonstrate that it continued to meet all 50 conditions.

The Commission and Keystone further assert that even if the Certification standing alone was not sufficient to meet Keystone's burden of proof, the evidence presented by Keystone, including testimony by witnesses and a filed quarterly report, satisfied the Commission's burden. Keystone explains that it is demonstrably untrue that it failed to produce substantial evidence, as "[t]he hearing transcript is 2,507 pages; the evidentiary hearing took nine days; and seven witnesses testified for Keystone." Keystone's Reply Brief at 16. However, explaining the number of transcript pages and the length of evidentiary hearings does not indicate that Keystone actually presented evidence sufficient to fulfill its burden, and Keystone fails to detail the pieces of evidence it submitted that satisfied these conditions.

The Commission's finding was clearly erroneous and not supported by substantial evidence.

C. THE COMMISSION ERRED IN ITS FINAL DECISION, CONCLUSIONS OF LAW, BY CONCLUDING THAT KEYSTONE IS AS ABLE TODAY TO MEET THE CONDITIONS OF THE PERMIT AS IT WAS WHEN THE PERMIT WAS ISSUED, AND BY BASING ITS DECISION REGARDING CERTIFICATION ON WHETHER KEYSTONE CONTINUES TO BE ABLE TO MEET THE REQUIREMENTS IMPOSED BY THE 2010 PERMIT.

The Commission can grant permits "upon such terms, conditions or modifications of the construction, operation, or maintenance as the Commission deems appropriate." SDCL § 49-41B-24. While these conditions clearly do not need to be met at the time of the Commission's approval, as the permit is granted "upon such terms," if construction does not commence within four years after a permit is issued, "the utility must certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued." SDCL § 49-41B-27. This

means that if a utility wants to begin construction years after its initial, conditional approval, it must certify that it meets the conditions set by the Commission four years previously. The legislative history is void of any information to support the Commission's approach taken by the Commission that allowed the utility to meet conditions set by the Commission more than four years after approval. Had the legislature intended this result, it would have stated that the utility must show, in the future, that it will be able to meet the conditions set by the Commission.

While some of the conditions clearly had to be met by the time of certification, when the Commission did set conditions that could be complied with at a later date, it clearly stated this. For example, in Condition 43.a, the Commission stated that "during construction," Keystone must cease work and notify specific parties if it discovers an archaeological resource. However, there were many conditions not conditioned upon the occurrence of a specific event with which Keystone has yet to comply. Condition 44.b requires that Keystone conduct a pre-construction field survey of specific areas. It is now 2016 and Keystone still has not completed that requirement. Because it has not completed Condition 44.b, it also has not completed Condition 44.c (preparing and filing with the Commission a paleontological resource mitigation plan). The Commission claims that Conditions 44.b and 44.c can be complied with upon the occurrence of a specific event, such as start of construction, however, nothing in these conditions so states. Keystone has failed to comply with these conditions. Furthermore, the mere *ability* to do something is not the same as actually doing it. As such, Keystone has failed to meet its burden of proof with respect to the conditions of the 2010 permit.

Because the Commission found only that "Keystone is as able today to meet the conditions as it was when the permit was issued," the Commission based its decision on a faulty standard, and its decision must be reversed as a matter of law.

III. PRESIDENTIAL PERMIT DENIAL

A. THE COMMISSION ERRED BY ACCEPTING KEYSTONE'S CERTIFICATION DESPITE THE FACT THAT THE PRESIDENTIAL PERMIT FOR THE PROJECT WAS DENIED, AND BY ISSUING THE ORDER DENYING MOTION TO DISMISS ON DECEMBER 29, 2015.

The Commission erred by finding that Keystone continues to meet Condition 2 of the Presidential Permit. Condition 2 of the 2010 Permit requires that Keystone "shall obtain . . . all applicable federal, state and local permits." S.D. PUC Docket HP 09-001, *Amended Final Decision* at 25. More than six years have passed since the Commission first issued a permit authorizing construction of the 2009 Project, and Keystone still has not obtained the requisite federal permit. Keystone argues that that the 2015 Presidential Permit denial does not mean it has failed to satisfy Condition 2. To support this assertion, Keystone points to the fact that it first obtained a permit from the Commission without a Presidential Permit. However, the Project was conditioned on a Presidential Permit. In 2015, the State Department specifically denied that permit for the Project as it stands today.

The Commission argues that it can simply reapply, like it did after its 2012 Presidential Permit rejection. But the 2012 Presidential Permit was denied due to the State Department's inability to timely review; it did not reflect a rejection of the underlying plan for the pipeline. The 2015 Presidential Permit denial, however, did signal a rejection of the underlying plan for the pipeline. In its permit rejection, the federal government specifically stated that the Project "would lead to increased consumption of particularly GHG-intensive crude oil," and that the State Department's approval of the Project "would undercut the credibility and influence of the United States in urging other countries to put forward ambitious actions." Record of Decision at 31. Although the Commission correctly points out that Keystone can reapply for a Presidential Permit, it has not indicated how the Project would address the root cause of its rejection. Instead, Keystone

only alleges that it is not impossible for it to obtain a Presidential Permit from a new president. Possible future contingencies—such as the possibility that the State Department will change its mind—do not constitute sufficient support for agency action under the APA. *Kellog v. Hoeven School No. 53-2*, 479 N.W.2d 147, 151 (S.D. 1991). Keystone's hope is not enough to satisfy Condition 2. Keystone has not been able to show that, if it were to reapply, it would or even could satisfy the federal government's stated concerns, and obtain a Presidential Permit.

The Commission also points to the fact that earlier this year, the South Dakota Legislature considered but did not pass a bill amending SDCL § 49-41B-24. Senate Bill 134 would have required that an applicant obtain a Presidential Permit before the Commission could grant such a permit. The defeat of this bill does not support the Commission's argument. The Tribe asserts that Condition 2, as written by the Commission, is not satisfied because the federal government has denied the Presidential Permit. While interesting that the South Dakota Legislature considered such a change, its defeat does not change the Commissions' requirements stated in Condition 2.

The federal government has rejected the Project as currently proposed. If Keystone were to change the Project in order to obtain a Presidential Permit, it would need to reapply for a new permit from the Commission. The Commission abused its discretion by accepting certification that Keystone satisfies all permit conditions, when the federal government has already denied the Presidential Permit Keystone needs to satisfy Condition 2.

IV. TRIBAL RIGHTS

A. THE COMMISSION ERRED IN ITS *FINAL DECISION*, FINDINGS OF FACT, BY ASSERTING THAT PAGE 11 OF THE RECORD OF CONSULTATION IN THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT ESTABLISHES THAT THE STANDING ROCK SIOUX TRIBE WAS CONSULTED BY THE DEPARTMENT OF STATE.

By equating "contacting" with "consultation," the Commission improperly found that the Department of State adequately consulted with the Standing Rock Sioux Tribe. Page 11 of the Record of Consultation simply shows that the Standing Rock Sioux Tribe was contacted, not meaningfully consulted. Pursuant to the NHPA and Executive Order 13175, however, the State Department was required to conduct *meaningful consultation* to comply with federal law. The fact that the Commission took judicial notice of the entire FSEIS, including Appendix E, without objection, does not mean that it took judicial notice of the legal conclusion that Keystone consulted with the Standing Rock Sioux Tribe. While it is undisputed that there was contact between the Standing Rock Sioux Tribe and the Department of State, as indicated on page 11, the Record of Consultation does not prove that there was meaningful consultation. Therefore, the Commission erred in finding that the State Department's Record of Consultation proves that the Standing Rock Sioux Tribe was consulted and in relying on this fact in determining that Keystone was able to meet permit conditions.

The Tribe has standing to assert that the Commission's Finding 57 was incorrect, contrary to what Keystone claims. SDCL § 1-26-30.2 states that "[a]n appeal shall be allowed in the circuit court *to any party* in a contested case *from a final decision*, ruling, or action of an agency." The Tribe, as party to this case, is appealing the Commission's *Final Order and Decision* accepting Keystone's Certification. In its *Final Order and Decision*, under the section entitled "Keystone's Ability to Meet the Permit Conditions," the Commission states that "[t]he record of consultation establishes that the Standing Rock Sioux Tribe was consulted by the Department of State." *Final Order and Decision* at 23. As this is one of the (incorrect) facts the Commission relied on in making its decision to accept Keystone's Certification, the Tribe, appealing the Commission's acceptance of the Certification, has the right to argue that this reliance was improper. The Tribe

was prejudiced by the Commission's decision to accept Certification. As the Commission relied on its finding that the Standing Rock Sioux Tribe was consulted by the State Department when reviewing Keystone's Certification, the Tribe has standing to assert that this finding was erroneous.

B. THE COMMISSION ERRED BY ISSUING THE ORDER GRANTING MOTION TO PRECLUDE CONSIDERATION OF ABORIGINAL TITLE OR USUFRUCTUARY RIGHTS ON JUNE 15, 2015, BY PRECLUDING THE INTRODUCTION OF TESTIMONY REGARDING ABORIGINAL AND TREATY RIGHTS, AND BY FAILING TO CONSIDER TRIBAL ABORIGINAL AND TREATY RIGHTS IN ITS *FINAL DECISION*.

The Commission and Keystone needed to consider how the route of the pipeline impacts the Tribe's usufructuary rights. Without this consideration Keystone cannot possibly comply with the permit conditions. For example, under Condition 6.a, Keystone will continue to develop route adjustments to "accommodate environmental features identified during surveys, *property-specific issues*, and civil survey information." (Emphasis added.) The Tribe's usufructuary rights, such as the rights to hunt, fish, and capture on aboriginal lands, are *property* rights. The Tribe has usufructuary rights in much of the land the Project will run through. By refusing to consider these rights, Keystone could not properly certify, nor could the Commission confirm, that Keystone continued to meet with the permit conditions. Because the Commission was obligated to hear all arguments regarding the proposed project and its ability to meet the permit conditions, it erred in precluding the Tribe's testimony on this subject.

The Commission has the authority to route a transmission facility. Keystone claims that *In re Nebraska Public Power Distr*. cannot be read as support that "SDCL 49-41B-20 grants the PUC the authority to route a transmission facility," because power lines and pipelines are treated differently in the Act. *In re Nebraska Public Power Distr*., 354 N.W.2d 713, 721 (S.D. 1984). However, neither SDCL 49-41B-20 nor SDCL 49-41B-36 treat pipelines differently from power lines. Pipelines and power lines are both transmission facilities as used in both SDCL 49-41B-20

and SDCL 49-41B-36. SDCL 49-41B-2.1 ("a transmission facility is: (1) An electric transmission line . . . [or] (2) A gas or liquid transmission line"). *In re Nebraska Public Power Distr*. held that SDCL 49-41B-20 grants the PUC the authority to route a transmission facility. PUC has this authority over transmission facilities, including pipelines. The Project's route has continued to change since 2010. The Commission has authority to review the pipeline's route to make sure Keystone still meets the conditions of its permit.

The Tribe's usufructuary rights have never been extinguished. These rights do not require adjudication to exist—they exist by virtue of the Fort Laramie Treaty. While Congress does have the power to abrogate treaty rights, Congress's intent to do so must be clear and plain. *United States v. Dion*, 476 U.S. 734, 738 (1986). Congress never clearly extinguished the Tribe's aboriginal title and usufructuary rights. These rights therefore still exist and needed to be considered. Because the Commission's decision to preclude relevant evidence impaired its ability to fulfill its duties under SDCL 49-41B, the Commission's decision must be reversed.

The Commission had jurisdiction to consider the Tribe's aboriginal title and usufructuary rights when determining whether Keystone continued to meet all 50 permitting conditions. Although the Commission clearly does not have the authority to adjudicate these rights in court, it erred by precluding evidence regarding usufructuary rights. In order to ensure that it was properly accepting Keystone's certification, it needed to be presented with all evidence regarding these rights and the effect of the Project on these rights.

C. THE COMMISSION ERRED IN ITS *FINAL* DECISION BY FAILING TO TREAT TRIBES AS LOCAL UNITS OF GOVERNMENT, AND BY FINDING THAT NO PERMIT CONDITION REQUIRES THAT KEYSTONE CONSULT WITH TRIBES ABOUT THE PROJECT.

By the plain meaning of the language, the Tribe qualifies as a local unit of government for purposes of SDCL § 49-41B-4.2. Although the term "local unit of government" is not defined in Title 49, it is defined in Title 34A, the environmental protection title. Specifically, SDCL § 34A-

6-61 defines the term as "a county, municipality, school district, special district or other political subdivision of the State of South Dakota *or a similar unit of government of another state or nation*." (Emphasis added.) The Tribe undoubtedly qualifies as a unit of government pursuant to this definition as it is a sovereign nation. Further, this makes sense under the plain language of the term.

The Tribe is also local. Keystone argues that 45 miles is not local. However, building the pipeline will be a massive undertaking. Construction workers and supplies will increase traffic in the area. Additionally, a pipeline brings environmental dangers. A spill could pollute the surrounding environment for many miles. The Project is at such a scale that a government merely 45 miles away must be considered local.

As it is manifest that the Tribe is a local unit of government, the Tribe needed to be accounted for in Conditions 6, 10 and 34. Keystone's failure to consider the Tribe under Condition 34.b is particularly egregious. Condition 34.b states that "Keystone *shall* seek out and consider *local knowledge,* including the knowledge of . . . *local* . . . *government officials*." Emphasis added. As the Project will cross aboriginal lands that the Tribe has lived on since time-immemorial, and of which the Tribe has a deep and unique understanding, Keystone needed to consider the local knowledge of the Tribe. Keystone's argument that it could not gain this knowledge and fulfill Condition 34 because the Tribe has passed a resolution that it opposes the project is absurd. In addition, Keystone's belief that "it is unlikely . . . that the contacts would be of any value," is ill-conceived and irrelevant. Keystone had a duty under Condition 34.b to seek out and consider the Tribe's local knowledge. Further, as Keystone is attempting a contentious undertaking, it needs to be able to have valuable conversations with groups opposed to the project. Because Keystone has not yet sough and considered the Tribe's local knowledge, it has not met Condition 34.b. As

Keystone was required to continue to meet with all the conditions upon which the permit was issued, and has failed to meet Condition 34.b, the *Final Order and Decision* must be reversed for lack of evidence of compliance with Condition 34.b.

CONCLUSION

For the foregoing reasons, the Yankton Sioux Tribe respectfully requests that the Court reverse the Commission's *Final Decision* and direct the Commission to issue an order denying Keystone's certification.

Respectfully submitted this 25th day of August, 2016.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of 15-26A-66(b)(2) of 16 pages or 5,000 words, because this brief contains 4676 words and is 16 pages in length.

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I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

Thomasina Real Bird

By: _____

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2016, the Yankton Sioux Tribe filed its Reply Brief in the above captioned matter with the Office of the Clerk of Hughes County Circuit Court via the Odyssey File & Serve System. Also on this 25th day of August, 2016, a true and accurate copy of the Reply Brief was transmitted to the following via electronic mail:

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